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# UNITED STATES-JAPAN SERVICES TRADE

## HEARING

BEFORE THE

## SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, TRADE, OCEANS AND ENVIRONMENT

OF THE

## COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

SEPTEMBER 28, 1988

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# UNITED STATES-JAPAN SERVICES TRADE

WEDNESDAY, SEPTEMBER 28, 1988

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY,
TRADE, OCEANS AND ENVIRONMENT
OF THE COMMITTEE ON FOREIGN RELATIONS,
*Washington, DC.*

The subcommittee met at 2:06 p.m., in room SD–419, Dirksen Senate Office Building, Hon. Terry Sanford presiding.

Present: Senators Kerry, Sanford, Adams, and Murkowski.

Senator SANFORD. The meeting of the Subcommittee on International Economic Policy, Trade, Oceans and Environment of the Foreign Relations Committee will come to order.

The hearing today has been called in order to examine two aspects of the trade and services relationship between the United States and Japan. The balance of trade in this area has turned dramatically in Japan's favor during this decade.

First, the subcommittee will examine certain problems encountered by the U.S. aircargo carriers doing business in Japan. I have been made aware of the difficulties that have been encountered a number of months ago by Federal Express. They came to talk about the obstacles they faced in initiating their small-package service to Japan. The subcommittee will hear testimony from a panel of witnesses representing the Department of State and the Department of Transportation, as well as Federal Express. Following this panel, a representative from Flying Tigers will present a statement explaining his company's view.

At this point I would like to emphasize that this hearing is intended to examine only a few of the views held in the aircargo industry. Due to time constraints, we are unable to hear from all carriers who are experiencing problems. However, we hope that hearing from this limited number will help to focus attention on the problem.

The second portion of today's hearing will focus on the U.S. industry's access to Japanese construction contracts particularly for public works projects. In this area my distinguished colleague from Alaska, Senator Murkowski, has been a leading voice advocating the fair treatment of United States industry in Japan. I thank him for initiating this. I am told that he has been slightly delayed and will be here shortly.

The subcommittee will hear testimony from representatives of the Department of Commerce, the Office of U.S. Trade Representative, the National Constructor's Association, and Mr. Clyde

Prestowitz, an author and former adviser on Japan to the Secretary of Commerce.

We are going to have to limit our testimony to about 5 minutes each. You have filed full statements which are a part of the record, but if we are to finish with all of these witnesses, we need to move right along.

The Acting Assistant Secretary for Policy and International Affairs of the Department of Transportation, the Honorable Gregory Dole is here, and I will call on him first. Mr. Dole.

Excuse me. I trust you will pardon me for now calling on Senator Adams for a statement.

Senator ADAMS. Thank you, Senator Sanford. I asked for this short period of time, Mr. Dole, because I am familiar with the procedures involved in the Department of Transportation since the sunsetting of the CAB, and you are—I don't want to say in Matt Scocozza's position, but is the Assistant Secretary above the decisionmaking authority for international routes, both cargo and domestic.

I want to leave a particular question with you and if you wish to submit an answer in writing to the panel of which both Senators Sanford, Murkowski, and I are a part, that would be all right with me. If you wish to give me a preliminary answer and answer further, that would be fine. I would take my opening statement time to ask this question.

Mr. Dole, last week you signed an order granting Continental Airlines the right to operate the Seattle-Tokyo route, a route that United has served extremely well for the last 5 years. Now, I am familiar with that proceeding because I was in the Department when we were negotiating to get United in. It took over 13 years and was an extraordinarily difficult thing to get United in as a competitor with Northwest and Japan Air Lines out of Seattle. The Seattle-Tokyo route is terribly important to Seattle as a port. And the same thing happens in the cargo area. So, my question is not extraneous to the cargo issue, but I limit it to passenger traffic so that I will not take any more time than absolutely necessary.

Now, I and other members of the Washington congressional delegation have consistently urged that United or, as a backup, American have this route. In a convoluted proceeding before the Department, Continental as I understand it, was originally awarded the route by an administrative law judge. That judge became disqualified, so you started another proceeding. And in that proceeding I believe United was chosen, and there were appeals from that. And while that second case was going on, the first case, which everybody kind of forgot about, went up to the court of appeals, was decided, and Continental got the route even while the fight was going on between United and American. All this has everybody confused, maybe not confused legally, but certainly in how to go about this.

Now, I understand that there's a right under the new procedure—and to me it's a new procedure because we don't have the CAB and we don't have the office in the White House for international routes as we did when I was Secretary—but that there are petitions to reconsider the Seattle-Tokyo route. Now, I believe a decision must be made on the merits, made in the public's nterests—I don't think it should be made on just technical procedures of how

one case started and somebody was dropped out and another case started and then the other one came back and went back up.

Can you explain to me how DOT would handle a petition for reconsideration and what standards the Department would use because it is my understanding you are now back to the first case, and that the technical process would be a petition for reconsideration of the law judge's decision? Now, could you answer that for me?

Mr. DOLE. Senator, I would like to say that we would like to submit a fuller discussion of this issue in writing later, but let me just tell you at this point in time, as a preliminary matter, this has been, as you have noted, one of the most convoluted proceedings before the Department. It has taken up an inordinate amount of time on the part of staff. There have been, as you noted, three different decisions made: one for Continental, then one for United, and a third for American. We had two different cases going on at the same time, as you indicated. The District of Columbia Court of Appeals, as you also noted, decided in favor of Continental, said at a particular point in time that the Department had selected Continental, and thus that decision should remain.

We anticipate, as you have also said, petitions for reconsideration from United and American. When we get those, we will look at those and consider them. In terms of the process, it's my understanding that we will look at the petitions for reconsideration and use the same standards that we used in the other case. We're going to decide it on the merits. We're going to look at it from a public interest perspective.

If the carriers request it, we may want to reopen the previous records associated with this. As you know, hours and hours of time was spent. We had every one of the presidents and CEO's come in and testify on behalf of their carriers before the administrative law judge. We would like to preserve, if possible, as much of that information, testimony and data that is available to us. Hopefully it won't be stale at the point in time that we make a decision. If it is, we will ask for additional information to update the data that was provided.

Senator ADAMS. You have the power to ask for additional submissions before the administrative law judge; do you not?

Mr. DOLE. I believe that we do; yes, sir.

Senator ADAMS. Unless you changed the rules, you have that. I just was asking you as a question, to the best of your knowledge. And you can submit that in writing. I'm not trying to ask you to spell out all the parts of it. I just would like that submitted to the committee as promptly as possible—it means a great deal to our community because of the feeder routes, whether we're going to have another fight with Japan as to whether or not they'll allow the carrier in, which they blocked out before for their own good foreign policy reasons to build their carrier, and this goes into the cargo matters.

So, this committee is very interested in that, and I thank the chairman for giving me the time. And I apologize, Senator Murkowski, for bringing up that point. But it is a very hot one right at the moment.

Mr. DOLE. Senator, if I may just add. As you know—at least I have been reading in the press—and I'm sure you have as well or have been informed by constituents—that Continental Airlines is taking the position at this point in time that we do not have the authority to reconsider that case. Obviously, they are representing their interests in making that statement.

We, in the context of this proceeding—that is, in the filings by United and American that we anticipate—have to dispose of that issue of whether or not the Department has the right to reconsider this case.

Senator ADAMS. I understand. I understand that also. That is why I wanted you to submit it in writing. I am not trying with you to decide the case here. I just wanted the position made, the understanding of where at least this Senator and others from the Northwest are, and ask for your immediate consideration because these matters will affect us greatly and we hope for a prompt decision.

Thank you, Mr. Chairman.

Senator SANFORD. Thank you.

Mr. Vance Fort is the Vice President for International Governmental Affairs for the Flying Tigers, and I don't want him to be sitting by himself when the panel gets through. So, I will ask him to come up and sit at the table now. Mr. Fort.

Then Senator Murkowski is here. Would you care to make an opening statement?

## OPENING STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman. I very much appreciate the opportunity to join with my colleagues. I thank you Mr. Chairman for scheduling this hearing. With regard to my friend from Washington, Senator Brock Adams, he was with me this morning, virtually all morning, on a very important hearing on a matter of great interest to Alaska, something called the Jones act. I won't belabor the audience nor the witnesses and attempt to give them a dissertation of the length that I did this morning, but Senator Adams, I do appreciate your contribution to that hearing this morning.

I am very pleased that the committee will have the opportunity to review the progress that we have made on several issues relating to our services trade relationship with our good neighbor Japan. As has been pointed out, this is the fourth hearing held on United States-Japan services trade over the last 3 years. I would like to point out that these hearings have attempted to be constructive in recognizing that the United States is the largest market for Japan. We realize, on the other hand that the United States shares very little in the markets in Japan.

Our interest in the issue of United States-Japan services trade has been sparked by changes in the United States competitive position in services trade. And if we reflect back to 1982, the United States had an overall surplus in services trade of $36 billion. By the end of 1987, that surplus had dwindled to $12 billion. By the end of this year, we are expected to have a deficit in services trade of about $8 billion. This is a source of tremendous concern to the

Congress and the private sector as we observe that the service sector accounts for about 75 percent of our employment.

One of the countries with whom we have seen a marked turnaround in our balance of trade, of course, is Japan. In 1984 for the first time we had a deficit in services trade with Japan of $676 million. Over the past 4 years, that deficit has continued to grow.

While this turnaround can be traced in part to increases in Japanese investment in the United States, concerns have been raised that the deficit can also be attributed to barriers to United States firms and their participation in various service industries in Japan.

Now, in 1986 we heard testimony regarding serious barriers to United States participation in Japanese construction and transportation sectors. We learned that despite the international competitiveness of the United States construction industry, our international firms were doing no construction business of any consequence in Japan. And I say virtually none because the exception appears to be two Mrs. Fields cookie stores in Tokyo. And I think that is a fair assessment.

We also learned that the nontransparent, closed nature of Japan's bidding system effectively ensured that foreign firms would have little chance of penetrating that market.

After 2 years of unsuccessful negotiations, in December 1987, Congress enacted sanctions which prohibited Japanese construction firms from participating in any federally funded public projects. And that was generated primarily by the Kansai International Airport issue. These sanctions were successful I think—and most people would agree—in bringing Japan to the negotiating table to propose significant changes in the bidding system that would allow United States firms fair access to bid on major projects in Japan.

I think it was clear to everybody we weren't talking about going over and building highways or going over and building concrete buildings. We were talking about design engineering, food systems, people-mover systems, air traffic control systems, and so forth in the areas where we had a degree of expertise and competitiveness and could actually save the Japanese taxpayer substantial moneys.

Today we are going to hear testimony from industry and administration officials on the initial impact of that agreement—an evaluation of it—and its chances for resulting in a true market opening.

In addition, we're going to hear what progress has been made to expand opportunities for United States cargo and passenger carriers, primarily cargo carriers, in Japan. In the past this committee has expressed concern over the inability of United States firms to fully utilize the rights granted to our carriers in our aviation agreements with Japan while Japanese carriers appear to have been able to take full advantage of the rights granted them in our bilaterals.

I want to thank you, Mr. Chairman. I look forward to the testimony of the witnesses today. And I think it will give us an opportunity to evaluate the status as we look at these firms, these U.S. carriers, who are attempting to maintain a reasonable market segment against some very, very tough competition, but I think they are up to the challenge.

[The prepared statement of Senator Murkowski appears in the appendix.]

Senator SANFORD. Well, thank you very much.

Again, I thank the panel members for coming. I would like to ask you to limit your testimony to 5 minutes. A little yellow light will warn you that the red light is about to come on. Mr. Dole.

**STATEMENT OF HON. GREGORY S. DOLE, ACTING ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION**

Mr. DOLE. Thank you, Mr. Chairman, members of the subcommittee. It's a pleasure to be here this afternoon to bring you up to date on developments in our aviation relationship with Japan.

The United States-Japan air transportation market is one of this country's largest and most important international markets. Japan is the United States' leading aviation market in terms of revenue passenger miles, passenger revenues, freight tons, freight-ton miles, freight revenues, and total revenues.

During the 1979–87 9-year period, the United States-Japan air passenger market grew almost 150 percent for an average annual increase of 9.6 percent. In the first 5 months of this year, compared with the same period in 1987, the United States-Japan passenger market increased almost 30 percent. This relative increase far surpassed that of other leading markets.

U.S.-flag airlines are carrying more than 50 percent of the passengers between our two countries, and less than one-third of those passengers are U.S. citizens.

On the cargo side of the equation, during the 9-year interval 1979 to 1987, United States-Japan air freight tonnage rose 111 percent for an average annual increase of 8.7 percent. During the first half of 1988, United States-Japan air freight increased almost 44 percent compared to the same period last year. Our U.S.-flag share during this period was almost 47 percent compared to 42 percent the same period a year ago, so there has been an increase.

Clearly, this is a vital transportation market, one deserving careful attention by the Congress and by the executive branch.

I would like to spend a few minutes reviewing our policy objectives and then look at the application of this policy in the context of our aviation relationship with Japan.

Our civil aviation policies focus today on obtaining a concrete balance of benefits between ourselves and other aviation partners and maintaining those benefits through rigorous enforcement of U.S. carrier rights under existing agreements. No country should expect to introduce new services to the United States unless it is willing to grant opportunities of equivalent value for the U.S. airlines.

We do not offer foreign airlines new or additional access to our markets unless we are satisfied that their marketplace structures are fair and nondiscriminatory. The United States also insists on the elimination of unfair or restrictive practices or requirements which impede the ability of U.S. airlines to proficient and truly competitive operations.

When foreign governments withhold or restrict opportunities that should be available to U.S. carriers under previously negotiated bilateral agreements, we must stiffen our resolve. If we do not safeguard rights that we have previously negotiated, we may be forced to pay for these same rights time and time again. Repayment significantly undermines our ability to eliminate unwarranted restrictions on U.S. carrier operations and to achieve a meaningful balance of aviation benefits with our trading partners.

Our aviation policy is built on a determination to provide U.S. carriers with a level playing field and equitable marketplace structures.

I would like to turn my attention to Japan at this point which provides an example of how we have applied our current policies to an important aviation relationship. Recent developments in that relationship center on doing business problems under existing agreements and our efforts to seek new and expanded opportunities for U.S. carriers in these markets.

As to the doing business problems, it is significant that over the last several years our airlines have experienced numerous difficulties in attempting to operate in Japan. Some of these problems involve the imposition of burdensome and costly restrictions by Japanese authorities. Others involve the denial of rights which our carriers are now entitled to.

The United States has insisted on the elimination of these doing business problems. It has made a concerted effort to resolve each and every one of them when they occur and has devoted considerable resources to this endeavor. Our initial approach has been to handle these matters through diplomatic efforts. Failing satisfactory resolution through these channels, we have used regulatory measures to encourage necessary reforms. In pursuing this course of action, we have repeatedly emphasized that we will not make concessions that amount to payment for rights we now hold and that we are prepared to impose economic sanctions to protect and enforce those rights.

I am pleased to report that this approach has helped us resolve some doing business problems involving the imposition of burdensome Japanese administrative requirements. For example, in response to our concerns, Japanese authorities have significantly reduced or eliminated previously imposed restrictions and requirements affecting customs inspections at Tokyo's Narita Airport, the availability of prime time slots for U.S. carriers at that airport, and documents required for U.S. charter operations.

More recently we have been successful in eliminating burdensome administrative requirements which impeded Federal Express' ability to provide effective small-package service to Japan.

Mr. Chairman, can I have 1 more minute?

Senator SANFORD. Yes, sir.

Mr. DOLE. Thank you.

Prior to the introduction of Federal Express into the Japanese market earlier this year, the Japanese complained that Federal Express proposed operations would not fully comply with the small-package provisions of the 1985 MOU. They questioned whether the type of airwaybill used by Federal Express would meet the require-

ments in the MOU that each package have its own individual airwaybill.

Both the Departments of State and Transportation made representations in strong support of Federal Express' ability to use its own airwaybill system which is uniquely tailored to its way of operating. We have firmly maintained that the Federal Express operations are consistent with the MOU, and as a result of that position, I believe we have successfully defended Federal Express' ability to continue to operate using its present procedures.

We have also made progress in resolving other doing business problems in Japan, specifically Flying Tigers' ability to provide Tokyo-Europe service via Anchorage, and also we have recently found in favor of United Airlines—we have approved its application before us complaining against Japan Air Lines restricting its use of the CRS system.

I have other information that is included in my prepared text that we can talk about after completion of the testimony by others. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Dole appears in the appendix.]

Senator SANFORD. Thank you very much. And we will, of course, put all of that in the record.

Mr. Angevine.

## STATEMENT OF CHARLES ANGEVINE, ACTING DEPUTY ASSISTANT SECRETARY FOR TRANSPORTATION AFFAIRS, DEPARTMENT OF STATE

Mr. ANGEVINE. Thank you very much, Mr. Chairman. I am pleased to be here to represent the Department of State in this review of United States-Japan aviation regulations.

The Department attaches great importance to support of U.S. aviation interests. The United States-Japan relationship is recognized as vital to United States economic interests.

And the Department's senior aviation official, Jeffrey Shane, in whose place I am acting today has been extensively involved with this relationship. Mr. Shane unfortunately had previously scheduled negotiations in Switzerland today and could not be here. He has asked that I send his regrets to members of the subcommittee.

Mr. Chairman, Ambassador Mansfield, the former Senate majority leader and current United States Ambassador to Japan, describes the United States-Japan relationship as the most important bilateral relationship in the world, bar none. Certainly that relationship is vital to U.S. security interests in the Pacific and to U.S. hopes for future economic growth. Indeed, the dynamism of the Pacific basin, a modern economic miracle, flows directly from the United States-Japan relationship.

The importance of Japan to United States aviation interests is similarly clear and compelling. Japan is the leading bilateral aviation partner of the United States. About 6 million passengers will fly between the Japan and the United States this year. Traffic levels through April were up 30 percent over the previous 12 months. Cargo revenues were up 50 percent. Total revenues to the airlines of both countries are now running about $6 billion annual-

ly, and they're divided roughly equally between the carriers of the two countries.

But Japan's importance to United States aviation interests cannot be measured exclusively in bilateral terms. Japan serves as a hub for operations by United States airlines throughout Asia. The rapid growth in traffic between the United States and Korea, China, Taipei, Hong Kong, Thailand, and other parts of the Pacific basin is facilitated to a significant degree by United States carriers' hubbing activities in Japan.

The benefits of the bilateral aviation relationship also extend beyond the U.S. airlines. Japanese tourists spent $2.1 billion on goods and services in the United States in 1987, and Japanese citizens make up more than 70 percent of the travelers between the United States and Japan. In Hawaii, Guam, and Saipan, Japanese tourism makes the difference between prosperity and depression.

Despite the many benefits and continuing growth of the United States-Japan aviation relationship, it is marred by friction and missed opportunities. The basic framework for the relationship is restrictive. The number of United States airlines able to operate to Japan is limited, the amount of service is restricted, fares are regulated, cargo operations hamstrung by unavailability of space and cumbersome procedures, and charter operations are under tight quotas. As a result, U.S. airlines are denied opportunities, travelers and shippers are denied the benefits of additional competitive service, and the U.S. travel industry is denied additional growth.

This restricted framework has troubled the relationship for many years. It stems principally from Japanese fears that in a more open environment, United States airlines would gain a disproportionate share of benefits from the relationship.

We have in 1985, in 1982, and in 1980 taken interim steps to expand that relationship.

Last week in Tokyo, Mr. Shane proposed to Japanese authorities a comprehensive revision of the bilateral aviation relationship. The proposals calls for expansion in route rights and beyond points sufficient to cover anticipated demand for new services for the next 10 to 15 years. It calls for additional designations for U.S. combination and all-cargo service. It calls for expansion of the charter quota. It calls for relaxation of pricing restrictions.

May I have another minute?

Senator SANFORD. Yes.

Mr. ANGEVINE. That proposal, if accepted by Japan, would have created a relationship vastly more suited to the needs of travelers and shippers. It would have eliminated many of the sources of friction between the United States and Japan on aviation issues and would have given significant new commercial opportunities to the airlines of both countries.

The initial Japanese response to our proposal was not encouraging. Their approach has been and continues to be more restrictive than we believe appropriate. We think it possible to devise a more open framework which will protect the interests of airlines in both countries. We believe that our proposal deserves greater consideration from Japan than it has yet received and look forward to a response from Japan more consistent with Japan's present economic position and responsibilities.

In my prepared statement for the record I comment also on a couple of current problems which were discussed at the negotiations. I will be prepared to provide additional information or to answer questions as the committee feels necessary. Thank you very much.

[The prepared statement of Mr. Angevine appears in the appendix.]

Senator SANFORD. Thank you very much.

Mr. Cloud, we'll be glad to hear from you.

**STATEMENT OF A. DOYLE CLOUD, JR., VICE PRESIDENT, REGULATORY AND GOVERNMENT AFFAIRS, FEDERAL EXPRESS CORP., MEMPHIS, TN**

Mr. CLOUD. Mr. Chairman and members of the subcommittee, we appreciate this subcommittee's continued interest in the aircargo issue.

We would take this opportunity to let the State Department and the Department of Transportation know that we also appreciate things that have happened in this area in the past year. One, an excellent cargo policy has been drafted. Two, an outstanding study has been drafted. And three, in the last round of negotiations, we see a renewed aggressive position in negotiations for aviation, particularly cargo rights, with the Japanese Government.

However, all of us today are witnesses to what we see at Federal Express as an international aviation disaster. This disaster, though economic, is confirmed in the aircargo study that has been put forth by the DOT and by the State Department. The U.S. share in the world market declined from 21.2 percent in 1975 to 14.1 percent in 1985, a 33-percent decline.

The U.S.-flag share in the Asia Pacific market decreased from 49.7 percent in 1975 to 41.2 percent in 1986. Japan Air Lines generates the majority of its United States traffic from points beyond Japan while Japan precludes Federal Express and other cargo carriers from transporting our own United States trade through Japan.

The United States carrier market share in the United States-Japan cargo market declined from 48.3 percent in 1985 to 43.5 percent in 1986 while Japanese carriers market share increased by approximately 5 percent.

Japan Airlines flies 58 percent of its cargo to and from the U.S. as fifth and sixth freedom traffic while U.S. carriers transport only 10 percent of their aircargo between foreign countries.

We allow Japan not only to dominate, but to actually control United States trade, our own traffic moving beyond Japan. We at Federal Express find this quite amazing.

However, there is a solution proposed by DOT and State. In the new policy, that solution is named "The Open-Market Policy." In the new aircargo study, it is deemed freedom of entry. And in that study, there is language which says the carriers who will ultimately help the United States retain its share of the market are the new integrated carriers such as Federal Express, United Parcel Service, Emery Air Freight, and the like.

The only piece of the puzzle that is missing, therefore—we have the problem, we have the proposed solution. The missing piece of the puzzle is an open agreement with Japan. It is a tough assignment. They are very difficult to deal with. They are difficult to negotiate with.

You will find it amazing, however, that the missing piece of the puzzle has been furnished to us by Robert Murphy who signed the Civil Air Transport Agreement between the United States and Japan in 1952. It's the agreement I hold in my hand. It is still a valid agreement. It has not been abrogated nor changed. There have been some interim steps taken, each including language which preserved the rights of the United States under the 1952 agreement. This agreement is an open agreement. It allows fifth and sixth freedom operations by United States and Japanese carriers.

During a period where Japan has taken over automobiles through our open market, computer chips through our open market, motorcycles through our open market, televisions through our open market, and machine tools through our open market, we have allowed them to close our open market to and from Japan in aircargo through what I must say is a charade called comprehensive revision talks.

Comprehensive revision talks in aircargo have failed. We must admit they have failed, and we must bring comprehensive revision talks to an end.

Our open market in aircargo needs no new agreement with Japan. It needs only the aggressive support and enforcement of our own Government. Our negotiators, as I have said earlier, recently took a very tough stance with Japan on the cargo issue.

And I would like just a few more seconds as well.

Senator SANFORD. Fine.

Mr. CLOUD. We currently, with a new administration looming, either Republican or Democratic, with a new cargo study, with a new policy, need to create a new day in aircargo negotiations. Revision talks have taken place for 6 years with absolutely no result, and we need to assure—we, the Government; we, the agencies; and we, the carriers that the Government of Japan lives up to its current agreement allowing open competition in aircargo. The industry is ready. We believe State and DOT are ready. They need only the commitment of Congress to vigorously support their difficult task of assuring that the Government of Japan abides by the current agreement.

With your support, which may ultimately include some form of sanctions, I believe the market in Japan in aircargo can become a competitive market in a short period of time.

[The prepared statement of Mr. Cloud appears in the appendix.]

Senator SANFORD. Thank you very much.

Mr. Fort, we would be delighted to hear from you now.

**STATEMENT OF VANCE FORT, VICE PRESIDENT, INTERNATIONAL AND GOVERNMENTAL AFFAIRS, THE FLYING TIGER LINE, INC., LOS ANGELES, CA**

Mr. FORT. Thank you very much, Mr. Chairman. I appreciate the opportunity to present our views on this very important issue. I will endeavor to keep my comments short. I have prepared very extensive written testimony which I request be placed in the record.

Senator SANFORD. Yes, thank you.

Mr. FORT. Flying Tigers is the world's largest all-cargo carrier. We operate in the United States, in Europe, the Middle East, South Pacific, South America and, of course, in Asia. Our biggest market is Japan and we have considerable experience in that market, in that highly constrained and restrictive environment. Flying Tigers has long been a proponent of greater opportunities in domestic and international air transportation for all carriers and, indeed, we advocated, along with Federal Express and other carriers, for the early passage of the Airline Deregulation Act.

Flying Tigers services in international transportation are performed, as was stated earlier, in accordance with international rights, rights negotiated by the United States and paid for by the United States. I am intimately familiar with that negotiating process having worked for over a decade at both the Department of Transportation and the CAB as a member of those negotiating teams. Indeed, I can recall one of my early missions working with Senator Adams, then Secretary Adams, on an Unfair Competitive Practices Act violation against Japan back in 1978.

Air carrier rights, as I say, are paid for by the United States Government, and that payment takes the form of commensurate authority given to the airlines of the other party, in this case Japan. However, the authority that U.S. carriers seek to exercise is often impeded. Indeed, sometimes the restrictions placed on the implementation of those rights are so severe that the rights, in fact, can't be implemented at all.

In contrast, few if any restrictions are placed on the operations of foreign carriers, on the carriers of Japan. They fully avail themselves of the very open and dynamic and unique U.S. marketplace. They compete aggressively. Access is the key to the U.S. market for foreign carriers. For American carriers, access is usually the first of many in the long, arduous process.

As a result of this double standard, the United States too frequently negotiates with Japan simply to remove restrictions that have already been paid for, in essence, paying twice for the same rights.

I will focus my comments here on just two of our current doing business problems and alert the committee to one which is on the horizon looming very large.

For the past 8 years, my company, Flying Tigers, has been seeking to transport traffic from Japan through the United States, specifically Anchorage to Europe. Because of the changing patterns of world trade, that route, that market, is becoming evermore viable and evermore important to our company. For this past 8 years, however, Japan has prevented Flying Tigers from conducting a viable operation via Anchorage to Europe.

The United States, of course, does not place any restriction on the carriers of Japan for the operation of similar rights. The DOT has worked to resolve the issue. However, those efforts have been rebuffed by Japanese carriers. Indeed, they have rebuffed those efforts by DOT in ways which are, of course, very arrogant from our point of view.

Ground handling is another issue that we currently face. Ground handling is the actual handling of cargo, putting it on planes, taking it off. And the committee may not be aware, but from tender to delivery, cargo actually spends about 90 percent of the time on the ground. It's a very important area. United States carriers seek ground handling rights, but are denied those in large part in Japan. In the United States no such limitation is placed.

If I could have just another moment, Mr. Chairman.

Senator SANFORD. Yes.

Mr. FORT. No such limitation is placed on Japanese carriers.

Kansai Airport has been mentioned here earlier as an issue to be taken up later in these hearings. Of course, the public works sector, the construction sector—that issue has been long a trade issue for the United States, but it has not been focused on as an operating airport. And the problems that we anticipate there are grave. We would urge this committee to urge our negotiators to focus their attention on the very concrete problems that have been pointed out to them by the United States airline community that the Japanese seem intent on building into the Kansai Airport.

If I could just conclude with a very strong statement about our feelings, Mr. Chairman. Having been a negotiator, I know the lure of the big deal. I know how important it is to try to close a deal with a country such as Japan. Our policymakers, however, should not become intoxicated by the simple prospect of signing a new agreement. The more important aspect from our point of view is to make sure that existing agreements work. If they can do that, I think all of our industry will be one giant step closer to being able to exercise the opportunities that they rightly deserve and that have been paid for.

Thank you very much.

[The prepared statement of Mr. Fort appears in the appendix.]

Senator SANFORD. Thank you very much.

Mr. Adams, do you care to ask any questions? We're going to limit, depending on your own decision, between 5 and 10 minutes for the Senators and see how we go in the first round.

Senator ADAMS. Thank you, Mr. Chairman. I will limit mine to 5 minutes. And I appreciate your allowing me to do this because I have to preside at 3 o'clock, and that is the only reason for my requesting permission to start first.

Mr. Cloud and Mr. Fort, both of you—well, all of you are very familiar with this. But the regime that was established by the United States with its carriers, both cargo and passenger, in the period 1948 through about 1952 was known throughout the world as sort of the U.S. era. Isn't that correct? We pretty much controlled all the air business, and set the treaties and nobody cared much about rights at that point. Isn't that correct?

Mr. DOLE. Yes, Senator.

Senator ADAMS. So, that is what accounts for the 1952 agreement, Mr. Cloud, which—I happen to agree with you—is an agreement that provides us with access. I renegotiated Bermuda II which was the follow-on agreement with the United Kingdom and all of its former colonies and so on to replace the 1948 to 1952 regime. And by that time they were very tough on everything in that they did not feel they had gotten a fair deal in the 1948 to 1952 period. Isn't that correct, Mr. Fort?

Mr. FORT. That's right, sir.

Senator ADAMS. And the same thing occurred with the Japanese. I think, Mr. Fort, you will agree that when we went into this with the Japanese, they had seen Bermuda II, and they were not about to give us anything.

Mr. FORT. Yes.

Senator ADAMS. Now, my point is, Mr. Cloud, Mr. Angevine, and Mr. Dole, that I think there is a very good reason for pressing; that we will not just continue indefinitely, new agreements to replace the 1952 cargo agreement, that we have rights under it, and we're entitled to have them enforced. In other words, we are on the beneficial side of that treaty.

But the problem is—as pointed out by Mr. Fort and the reason for my original question to you, Mr. Dole—that we had the same kind of right with Japan with regard to another carrier coming in to Japan. That was the so-called United carrier award. It was United at that time.

Mr. DOLE. Yes, sir.

Senator ADAMS. And the Japanese kept us out under our access rights which we had—just like your 1952 rights in cargo, we had access rights—for 13 years.

Now, that is what I am concerned about. If we shift carriers, Mr. Dole, after having a carrier which took us 13 years to get in there, and you put a new carrier in there, there's going to be a thousand things: Not enough equipment by a new carrier, not enough handling facilities, not enough gasoline, not an ability to get it into Narita, insufficient space at the counters, insufficient handling space, insufficient personnel, not trained enough, not language proficient. I just mention a few. And I want to ask you, Mr. Fort, if that isn't about how the list begins to run.

Mr. FORT. That's about how it begins, sir.

Senator ADAMS. It's just about how it begins, isn't it?

So, that's one of the reasons I'm here—and I appreciate the indulgence of the chairman and the other members of the committee because I'm on the Far East Committee, and we deal on the Foreign Relations Committee with overlapping jurisdictions. I don't think we ought to overlap when we've got the hearing that deals with this problem, which is Japanese aviation. It's one of the reasons some of us from that panel have attended this one.

I just want to know what your position is—you are going to give it to me in writing on the United matter because it is complicated. And I've given you the reasons why I don't accept the fact, Mr. Cloud, that we have access rights and that we can shift carriers easily in Japan. I would like any comment by any member of the panel as to how they think we can best enforce a shift in carrier rights, which is what you are all talking about. Even if we get the

access agreement or even if we get a new agreement, how do we deal with this Japanese problem?

And whoever wants to address it, I'd appreciate it. And the rest can submit it in writing to me if you've got any difference. I've got my own thoughts about it, but I'd like to hear your statement.

Mr. DOLE. Senator, I would say that, if there were a problem in terms of gaining access for another carrier other than United in the *Seattle-Tokyo* case, I think we would have to take the same positions we have taken at least since I have been Acting Assistant Secretary with the Japanese in the two filings that were made, one by Flying Tigers with regard to the Anchorage issue, and another on behalf of United Airlines in its complaint against the Japanese Airlines vis-a-vis the use of the CRS system.

I think we would have to take a very hard line with them—bargain. I wouldn't even characterize it as bargaining. I would say we would insist on getting the full rights associated with what United currently enjoys for whatever carrier goes into that route. And again, without prejudging it, it could very well be United. I understand the point you're trying to make. That is, let's not take a chance. Let's retain United on that route to avoid confrontation unnecessarily with Japan.

Senator ADAMS. That to me is a great national foreign policy issue that we are trying to settle here with this committee. We have got something, and it is working, and we can keep it and people will fly. If we go to something else, it won't happen. And I know the only thing that I had left as the Secretary when the Bermuda II agreement broke down was to issue telexes that nobody was going to enter the United States under the agreement if they didn't comply with it. And that is a sort of hammer that we don't even use.

Mr. DOLE. Well, we are currently looking at what sanctions to impose in the case of the——

Senator ADAMS. Well, would you swap carrier for carrier?

Mr. DOLE. I'm sorry. Would we what?

Senator ADAMS. Are you prepared to go as far as swapping carrier for carrier? We don't land; you don't land.

Mr. DOLE. We are looking—hopefully we won't have to implement, but we're looking at a whole range of options in terms of sanctions. And that certainly falls within the range.

Senator ADAMS. Thank you, Mr. Chairman. You've been most kind. I apologize to my colleagues.

Senator SANFORD. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I would like to refer to testimony that is a little confusing to me. I believe, Mr. Dole, on page 2 you indicated that during the first half of 1988 United States-Japan air freight increased 44 percent. For the same period last year, our U.S.-flag share during the period was almost 47 percent compared to 42 percent during the same period a year ago. And, Mr. Cloud, I thought you said something of the opposite. And I wonder if you two gentlemen are in agreement, disagreement, or perhaps you could enlighten me because it is fairly significant.

Mr. CLOUD. They are two different periods of time and I believe two different areas, Senator. The figures that I understood Mr.

Dole to give were United States-Japan only. The real problem that we have is U.S.-Asia Far East where the differences are much greater. And they were also more current figures which I do not have available to me.

Senator MURKOWSKI. Would you agree with that, Mr. Dole?

Mr. DOLE. Yes, sir. Ours relate only to the United States-Japan trade.

And let me also say in response to an earlier comment by Mr. Cloud that the U.S.-flag share of cargo has declined dramatically in the last few years, but I must tell you that in the last year we have seen an increase in the U.S.-flag share internationally by 1 to 2 percent, which is not insignificant. We are seeing a change in direction in terms of the U.S.-flag share. We are real pleased to see that. We think that the industry is going through a bit of a transition right now.

Pan Am had withdrawn a whole host of—and I don't know what the numbers were—its large freighters from international service after it had purchased Seaboard World Airways. We don't have that capacity available anymore.

Senator MURKOWSKI. Thank you, Mr. Dole.

I gathered that everybody is a bit frustrated, to say the least. We have seen Mr. Cloud indicate Federal Express' difficulties associated with bills of lading and handling small packages and the difficulties of negotiating with the Japanese. We've seen the difficulties expressed by Mr. Fort of Flying Tigers, the freight originating and the utilization of ground facilities in Tokyo, and the inability to resolve these differences even though quite clearly the authority exists.

Mr. Dole, you indicated the leverage of sanctions or implied that. And I assume it is still a position of the Department of Transportation that sanctions are appropriate, and if necessary, you would support them.

Mr. DOLE. I think that is a fair statement.

Senator MURKOWSKI. Mr. Angevine, the State Department's position I took to mean that we should continue to pursue what is in our own best interests, but it had kind of a jawbone aspect to it. And I wonder if the State Department would support sanctions specifically if we can't get reasonable satisfaction.

Mr. ANGEVINE. Senator Murkowski, the State Department would support sanctions in the proper circumstances.

Senator MURKOWSKI. What are the proper circumstances, sir?

Mr. ANGEVINE. The proper circumstances would have to depend on the situation.

Senator MURKOWSKI. Are the circumstances such now that you would support them?

Mr. ANGEVINE. Not at the moment, sir.

Senator MURKOWSKI. Can you tell us why?

Mr. ANGEVINE. At the moment, we are in negotiations with the Japanese Government on the key issues of concern. These are good-faith negotiations on both sides. We have made progress in respect to the specific issues raised by U.S. carriers in their complaints before the Department of Transportation.

Senator MURKOWSKI. Now, I don't quite understand that because I understand that DOT has already ruled the Japanese are in viola-

tion of the agreements with Tigers and United. Now, if that isn't good enough for you, what is?

Mr. ANGEVINE. Those findings, sir, are consistent with our own approach. But under those findings the step that is now undertaken—and I believe that has the support of the Department of Transportation as well—is that we are discussing with the Japanese what their response will be in view of our conclusions.

Senator MURKOWSKI. How long do you discuss with the Japanese before you form a position within the State Department? I recognize your business is diplomacy, but there is a time to fish and a time to cut bait.

Mr. ANGEVINE. There is, and I do not think this is the time for us to take sanctions.

Senator MURKOWSKI. Can you give us a timeframe or is it just until you resolve the next meeting at which time you will address the question again and propose another meeting?

Mr. ANGEVINE. I think we have to have a separate situation for the two complaints which have been filed.

Senator MURKOWSKI. Now, we have heard individuals here comment that they have the authority, but yet can't operate. We've seen the reservation system with United Airlines. They can't get access into Japan, yet JAL has access to United's.

I am obviously somewhat frustrated with the attitude of the State Department. I am not making it a secret by any means. And when you give me in your testimony the realization and the generalization that you are not "satisfied," I think you have an obligation to indicate what you're going to do about it because, obviously, we have substantial leverage. Now, the diplomacy of using that leverage in my opinion is very strange to the State Department. But that is their own business. Nevertheless, access to the U.S. market is the leverage. And when I see the Department of Transportation prepared to issue sanctions and the State Department prepared to go off into never-never land and not have any parameters, why, obviously one who is associated with the business community can get a little frustrated.

Mr. ANGEVINE. Senator Murkowski, I certainly understand your frustration, but let me look at the specific situation in respect to the complaint from Flying Tigers about its Anchorage service.

Senator MURKOWSKI. Well, you have looked at that, and you've looked at Federal Express, and you've looked at United.

Mr. ANGEVINE. In respect to the Flying Tigers complaint, we discussed that in Japan. That was the single——

Senator MURKOWSKI. When did you discuss it last?

Mr. ANGEVINE. It was last week.

Senator MURKOWSKI. And you've discussed it before last week.

Mr. ANGEVINE. And we discussed it before last week. But we received a specific proposal from the Japanese in respect to that service that would enable that service to take place. And we are now looking at that proposal. Until we as a government make a decision on that proposal, I do not think that we should move to implement sanctions.

Senator MURKOWSKI. Well, can you give me an idea when you're going to reach a conclusion now that you are looking at it?

Mr. ANGEVINE. That is something that I on behalf of the State Department cannot give you alone. That is an administration matter. It is something——

Senator MURKOWSKI. Who takes care of administration matters down there?

Mr. ANGEVINE. Both the Department of Transportation and the Department of State would be involved. And my understanding is that these two Departments expect to look at that proposal over the course of the next few days.

Senator MURKOWSKI. Well, I can tell you, as a matter of fact—and I will be happy to provide you with the information—all of these problems were discussed by this committee 3 years ago, and we still don't have a result. Do you concur with that generalization?

Mr. ANGEVINE. I certainly concur because we are not there yet, but we have made considerable progress, and this subcommittee and its interests have helped to facilitate that progress.

Senator MURKOWSKI. Well, I'm sure the chairman will leave the record open, but if you would care to document specifically the progress, recognizing the reality that we've been working on it for 3 years and still have the problem. DOT says that JAL and NCA are using the rights they have without conditions. Why can't U.S. carriers? Is there a reason that there is not a quid pro quo here I guess is the question.

Mr. ANGEVINE. It is very clear that we have a problem, Senator, and I don't question that. The question is how do we get a solution. We are trying to seek a solution through negotiation. We do have to realize that the use of unilateral restrictions on access is not a one-way street, and we have to recognize we are dealing with a sovereign country and that that country differs with us as to what the meaning is of the bilateral agreement.

Senator MURKOWSKI. I certainly concur with that, sir. But by the same token, during the 3-year period we're talking about, the Japanese had complete freedom into the United States market. Now, what's reasonable? And how can the State Department take the position they do that given a little more time to study this, it's going to be resolved, if that isn't a jawbone approach, I don't know what is.

Mr. Chairman, I've got some other questions, but recognizing the time commitments and those of my colleague, I would terminate temporarily my series of questions.

Senator SANFORD. Senator Kerry.

Senator KERRY. Mr. Chairman, thank you very much. I want to thank you for holding these hearings. I was one of those, among others, who had been pressing for this, and I think the importance of this issue can't be overstated. I think Senator Murkowski has begun to voice a growing frustration among many of us which if the administration hasn't sensed it yet, I'm wondering about their ability to sense these things.

I think to put it bluntly Americans in every State in our Union are fed up with the notion that we're operating on an unfair playing field. And we've heard a lot of rhetoric about it. We've struggled for a trade bill. Here we are with just a classic example of unfair practices. The Japanese are spending 1 percent of their GNP

on defense, and we're spending 6 percent-something of ours on defense. We're helping to transport oil through the Persian Gulf. We've got 100,000 troops or so over there. They've got 100,000 businessmen over here. [Laughter.]

And I think Americans are really fed up. And if the message can't get through to our friends—and they are friends, and I really mean that. They are friends. But people are expecting something equal.

I was reading Mr. Cloud's testimony, and I think it is worth really going back at it and looking at it for a minute. In the latest rounds of talks a week ago, this problem is highlighted, and I'm frustrated listening to you say we're going to wait, this isn't the moment to proceed forward.

U.S. negotiators put forward a proposal which would have expanded the service opportunities for the United States and the Japanese for aircargo carriers, and it would have created a more open market, more open opportunity for both. That proposal called for the designation of additional United States carriers to engage in unrestricted operations with beyond Japan limits. What happened is the proposal—even though it was responsive to the stated needs of each side, the Japanese rejected it.

And instead, they advanced a proposal—and I'm reading from Mr. Cloud's testimony. "Instead, Japanese negotiators advanced a proposal that would extend the small package service restrictions now imposed against Federal Express, introduce new capacity controls over the market, and curtail sixth freedom operations by United States carriers. After United States negotiators noted that this proposal had already been rejected in December 1986 and July 1988, the Japanese requested new and immediate route flights for its carriers in exchange for an agreement to merely discuss"—this is the quid pro quo. You guys open it up to us, and we'll discuss whether or not somebody else is going to have what we agreed to previously.

Now, when is enough enough? Why don't we turn around and say "We're going to suspend the rights"? When are we going to defend our businesses, or aren't we?

Mr. DOLE. Senator, as I indicated at the outset, I have just personally signed two orders finding the Japanese in violation of the International Air Transportation Fair Competitive Practices Act of 1974, and am to a degree in agreement with you in your assessment.

I think, as I indicated in my statement, that we will not trade away existing rights or rights that we believe we currently enjoy at the expense of our carriers. We are taking I think a relative hard line at this point in time.

Senator KERRY. But we have traded them away. I mean, effectively you've traded them away. There was an agreement. The agreement was signed in 1952. The MOU was signed in 1985. The MOU revised the 1952 agreement. Federal Express expected to be able to begin its process, and it hasn't been. Not only hasn't it been, but additional requirements appear now to have been put forward.

Now, it seems to me you've traded it away de facto by not taking steps to protect them. The Japanese don't hesitate to protect their businesses. Why do we?

Mr. DOLE. Senator, in the case of Federal Express, are you referring to the small-package issue?

Senator KERRY. Correct, to the 70-pound limit on the packages and the one billing.

Mr. DOLE. That's correct, separate airwaybill.

Senator KERRY. It is my understanding you believe and have taken the position that they adequately satisfy the requirements.

Mr. DOLE. Yes, sir.

Senator KERRY. Having taken that position, what have we done to enforce it?

Mr. DOLE. Federal Express is currently flying at least three frequencies a week between this country and Japan bringing its load, sometimes numerous 70-pound boxes with a bar code attached to each one of those 70-pound boxes. The Departments of State and Transportation argued vehemently on behalf of Federal Express, and we have them flying right now, Senator, between this country and Japan.

Senator KERRY. Are you satisfied, Mr. Cloud, that the agreement is being implemented as per the agreement terms?

Mr. CLOUD. We aren't satisfied. We have a difference of opinion about the beyond right situation. The real problem for Federal Express, which has not been addressed, is, in fact, the major problem, and that's the protectionist position of the Japanese on the movement of our aircraft to beyond points.

We are unable due to the Japanese control of that activity to move a DC-10 into Hong Kong, for instance. We have a DC-10 that sits at Narita that is perfectly capable of moving to Hong Kong and transporting traffic to and from points beyond Japan. The Japanese Government will not allow us to do that. Yet, NCA, which was authorized in the same MOU as Federal Express, is currently conducting operations from Hong Kong specifically and other places transporting Hong Kong-United States traffic which the Japanese Government will not allow us to transport. There is a huge difference in market opportunities that NCA has in the entire marketplace when compared to the very, very small restricted opportunities that Federal Express has in the marketplace.

I can tell you that both State and DOT worked very hard on the paperwork issue. I believe we resolved the paperwork issue, and they have now taken in the last round of negotiations what we feel was an aggressive stance. I do think it is time to move beyond that, but I can say that in the recent past, we've gotten a significant amount of support from both State and DOT in this area.

Senator KERRY. You make the statement in your testimony that "the United States cannot continue to perpetuate Japanese protectionism by engaging in prolonged and unproductive bilateral talks."

Mr. CLOUD. Federal Express applied for authority to serve Japan in 1981. The existing agreement, as I've previously discussed, should allow us to institute services immediately. The Government of Japan was not and has not been willing to allow that to happen.

We are now through the sixth year of comprehensive revision talks. It is our position that we cannot—the Japanese certainly are friends of ours, just as they are with each of you. The Japanese, however, do not seem to lose our friendship when they negotiate very aggressively. And that is where this Government has to go. We cannot plan to have successful negotiations with the Government of Japan if at the negotiating table we want to see them leave the negotiating table and click their heels with glee. They simply are not going to do that if we've negotiated an appropriate arrangement.

Senator KERRY. Well, now, Mr. Dole, Mr. Cloud has also said that if the Government of Japan fails to observe the date that is set by the United States, the sixth freedom operations by Japanese carriers to and from the United States should be suspended and they should remain in suspension until the United States is allowed to designate our air carriers, one or more, given equal opportunity to serve their markets. Do you concur with that? Is that our intention? Are we going to do that?

Mr. DOLE. It is certainly something that we would consider, Senator.

Senator KERRY. Are we going to have 3 years of bilateral consideration?

Mr. DOLE. I would hope not, Senator. We don't expect that to be the case.

Senator KERRY. I have to tell you—I mean, I know you guys don't need to come up here and be berated by a lot of us, but there is such a frustration, and I have never seen such a frustration as you feel out there in the country right now about the imbalance of this process. It has reached a point of craziness where we are borrowing money from them to defend them, and then going into deeper debt in order to continue to borrow more. Now, if we can't be smart enough to figure out something else on this uneven playing field, I don't know where we are or where we're going.

I don't think anybody here is asking for us to become protectionist. I really don't. But I think we're saying we're going to reciprocate tit for tat. We're going to treat friends the way friends treat us, and we're going to play in the same ballpark.

And I think the Federal Express process, with all due respect—you know, the one barrier of the 70-pound process gets eliminated, but for all the energy expended and all the time consumed in getting rid of the one barrier that should never have been there in the first place, according to the agreement, two or three others are going to go up somewhere else, and we're going to spend this frustrating process going through it. And in the meantime, the congressional response on the trade agreement was precisely because of the frustration people have with the lack of reciprocity that the administration has been willing to implement.

Now, it is getting late. There are only a couple of months left and maybe less than that. But it seems to me that I hope this hearing and subsequent efforts are going to produce something.

Mr. Chairman, I would like to ask that the record be left open so that I could submit additional questions in writing.

Senator SANFORD. Yes. We will certainly leave it open, and I will doubtless have some additional questions that I would like you to

answer. We do have another panel, and I don't want to delay them too long. The worst thing about these hearings is when we have two panels, the second panel always gets shortchanged.

Mr. DOLE. Mr. Chairman, could I just respond quickly to Senator Kerry's comment?

We appreciate at the Department of Transportation—I'm sure State feels the same way—the kind words from Federal Express with regard to how we negotiated and worked together in providing that small-package service for Federal Express.

I want you to know that under the 1985 MOU, Federal Express was granted six frequencies a week. And as I said before, they were only providing three frequencies a week, but in fact it's four. There is still some room for them to move more cargo, additional cargo. I understand their concern is in the beyond rights issue, and we will work with them in the future.

Senator KERRY. Well, I am not just directing this at Federal Express. I am concerned about the fifth freedom rights, the sixth freedom rights, other companies, Flying Tigers, the United Airlines issue. It is repeated.

We just have aircargo in front of us here and construction, but this is replicated all across the panoply of business effort. And we can talk about competitiveness in this country, but it's not restricted solely by the creativity and technological portion. It's I think largely access to markets and ability to compete.

Mr. DOLE. Yes, sir.

Senator KERRY. I appreciate your presence. Thank you.

Senator SANFORD. What kind of action can you take to get the attention of the Japanese?

Mr. DOLE. Senator, we can do a number of things, as I said earlier, in the context of the Anchorage issue or the United Airlines-Japan Air Lines CRS issue. In the case of Anchorage, we could deny landing rights for some of the Japanese carriers if in fact they don't eliminate those conditions that they have imposed upon Flying Tigers in terms of its movement of cargo between Tokyo, Anchorage, and Europe.

They have imposed conditions which require that Tigers fly no more than 50 percent of its cargo from non-U.S. origin or to and from the United States. And we feel that under the agreement Japan cannot impose those kinds of conditions in advance of the actual service. They can ask for consultations 6 months after the operations begin if they feel that there is a problem, but currently they have imposed those conditions. And we, again as I said, found them in violation of the act that you all had passed a few years ago and are prepared, if necessary, to impose again the kinds of sanctions I had mentioned to you earlier, denying landing rights for Japanese carriers.

Senator SANFORD. Well, that is rather drastic. Aren't there some in-between steps somewhat similar to what the Japanese are smart enough to use?

Mr. DOLE. There are others as well, administrative in nature, imposing similar restrictions at customs or slowing down the process of moving their cargo through the customs clearance process. So, there are things that could be considered.

Senator SANFORD. Well, I think we want to pursue the questions maybe a little. Why don't we use them?

Mr. DOLE. I'm sorry?

Senator SANFORD. I say I think we will want to pursue that question a little bit further by asking why we are not using some of these, but I'll do that in writing.

Mr. DOLE. Yes, sir.

Senator SANFORD. Senator Murkowski.

Senator MURKOWSKI. Mr. Chairman, thank you. I have a series of questions that I think can be answered rather shortly, and I should be able to finish in 10 or 12 minutes.

Three years ago, I was the chairman of the Pacific and East Asian Affairs Subcommittee of the Foreign Relations Committee. We held hearings on this subject, and on July 18, 1985, a vice president for Northwest Airlines told this committee that JAL's computer reservation system did not display Northwest's service fairly and as a consequence, Northwest obviously didn't have the same opportunity for booking reservations that JAL did.

JAL, of course, faces no such barrier in the United States and has access. This problem was identified 3 years ago—the question is why hasn't something been done about it. DOT has already ruled that JAL's barriers for United's system violated our bilateral agreement.

We have testimony—3 years—and here we are back today. It still hasn't been done. Now, I have heard the argument of the gentlemen from the State Department. Mr. Dole, you've indicated your support of sanctions, but I think if there's a continuity in the committee process, Mr. Chairman, let's go back and recognize that we are revisiting. And in the meantime the Japanese continue to enjoy access. And I'm not belittling that and I'm not being critical. I'm only asking why we don't demand equity. Perhaps, Mr. Angevine, you'd care to respond to that.

Now, to set the record straight on another issue that's appropriate I think, on July 18, 1985, a vice president for Flying Tigers told this committee that in the United States ground handling is unrestricted. Japan Air Lines can come in here. It can establish its own company. It can be competitive. It can get handling companies to handle it. There are no restrictions.

But this was 3 years ago. The Japanese have yet to give Tigers ground handling permission. They have denied them enough space at Tokyo's Narita Airport to operate. In essence, they have an approval that is worthless. Since this problem was identified 3 years ago, gentlemen, why has nothing been done about it?

Now, here are two U.S. carriers, and it is simply a process of whether our Federal Government is demanding equity? One gentleman says the time isn't right. The other gentleman says he supports sanctions. Three years have gone by. Do we have to wait another 3 years?

Mr. DOLE. Sir, with regard to Northwest, staff tells me that Northwest never filed a formal complaint at the Department.

Senator MURKOWSKI. I didn't suggest they did. I said they came before this committee.

Mr. DOLE. OK, I'm sorry.

In terms of bias on the CRS displays in Japan, I don't know if Northwest still feels that way, but United I know in its recent filing with us never alleged that there was a display bias against United. Now, I don't know if that pertains at this point in time still to Northwest.

Senator MURKOWSKI. I don't think we should belabor that. I don't know that a U.S. carrier should have to file a complaint to get some action from the U.S. Government, but that may well be the case.

Senator MURKOWSKI. Concern has been raised over JAL's request to purchase 20 percent of the outstanding common stock of Hawaiian Airlines. Does the Department of Transportation plan to conduct an oral evidentiary hearing on this request?

Mr. DOLE. It is my understanding, Senator, that we are now just looking at that issue. We obviously have not taken a position at this point, but will expect to do so next week.

Senator MURKOWSKI. What action will the United States take to remove Japan's restrictions on Tigers' plans to reestablish a Tokyo-Anchorage-Europe route?

Mr. DOLE. Your question was what action will we take?

Senator MURKOWSKI. Yes.

Mr. DOLE. Well, as I said——

Senator MURKOWSKI. Specific.

Mr. DOLE. Sanctions are out there that I mentioned earlier.

Senator MURKOWSKI. OK, sanctions are out there, but we've already seen the testimony from the State representatives suggesting that it is not time for sanctions.

Mr. DOLE. Well, I expect the Department of Transportation will sit down with the Department of State and map out a strategy that does take into consideration sanctions.

Senator MURKOWSKI. If you got into that kind of a discussion, who would prevail? If State is against it and you're for it, what happens?

Mr. DOLE. Well, it is my understanding that the Department of Transportation, in fact, determines the position, in cooperation with the Department of State, in deciding on a position to take, and it's the Department of State that facilitates that decision through negotiations.

Senator MURKOWSKI. Well, it's my understanding that the Department of Transportation does have statutory authority given by the Congress. Now, the question is are they going to use it or not if it comes to having a difference of opinion with State.

Mr. DOLE. It's my position, Senator, that we will.

Senator MURKOWSKI. And that DOT does have statutory authority.

Mr. DOLE. That's my understanding.

Senator MURKOWSKI. So, we can expect an exertion of that authority within a reasonable period of time?

Mr. DOLE. I think that's a fair——

Senator MURKOWSKI. What is a reasonable period of time?

Mr. DOLE. The order that we went out with earlier this month indicated that we wanted to wait and see how the talks went forward that took place in Tokyo September 19 through 22. The team has just come back. We need to debrief the team, find out what op-

portunities are available to us to resolve this. If we don't believe that there are any, then we will at that point in time take action.

Senator MURKOWSKI. Well, I would certainly encourage the chairman and my colleagues that when we come back in January, we're going to look at this issue. I would certainly respectfully recommend that, and I would encourage some congressional action if we haven't seen some action by the administration.

Just very briefly, the Japanese Government has given Tigers ground handling permission—excuse me. United States carriers complain Japan's customs system is a major barrier to their operations. I think this is a State Department question. What are we doing to address customs barriers in Japan, Mr. Angevine?

[Pause.]

Senator MURKOWSKI. Are we working on it?

Mr. DOLE. Sir, if I may, and let the State Department follow up.

Senator MURKOWSKI. Just a short answer.

Mr. DOLE. Yes, sir.

Senator MURKOWSKI. I will keep my questions from now on as short as your answers.

Mr. DOLE. OK. We understood that there was and understand that there currently exists a problem at Narita in terms of customs.

Senator MURKOWSKI. That's an understatement. Please proceed.

Mr. DOLE. We have seen movement on the part of the Japanese. They have increased the number of trucks that move the cargo from Narita Airport to the Baraki clearance house. They have added additional shifts of people at the clearance house at Baraki.

Senator MURKOWSKI. So, you think it is getting better.

Mr. DOLE. It's going in the right direction, Senator. I would agree that it has not been resolved 100 percent.

Senator MURKOWSKI. Mr. Fort, how does customs affect your operation? I'm going to ask you, Mr. Cloud, the same question.

Mr. FORT. I was just intrigued by the answer of Mr. Dole. The fact of the matter is, Senator, that Baraki shouldn't exist.

Senator MURKOWSKI. What?

Mr. FORT. Baraki, the customs—the system that the Japanese employ where they have——

Mr. DOLE. Like a halfway house.

Mr. FORT [continuing]. Part of customs on-airport and another system for clearing off-airport. A bifurcated system should not exist. There is no, as far as I know——

Senator MURKOWSKI. Now, is it true that JAL owns the only trucking company that serves Baraki——

Mr. FORT. That is true, sir.

Senator MURKOWSKI. OK, go ahead.

Mr. FORT. And there is no attempt on the part of the Japanese or there is no contemplation even that the Baraki system as such be taken down. Moreover, and frankly much more importantly, they are going to create the same system at the new Kansai Airport. So, the problems that we have today at Narita in terms of customs, we can look forward to them experiencing those same problems at the new Osaka Airport once built.

So, while I would like to agree—indeed, it's a very critical part of the overall transportation scheme to have customs move in a fluid

way, have it facilitated—the fact of the matter is that while some progress has been made not nearly enough, and not anything fundamental, sir.

Senator MURKOWSKI. Mr. Cloud.

Mr. CLOUD. Japan, one of the most high technological societies in the world today, does not allow high technology in customs clearance. Japanese changes in customs procedures have been virtually nil, though we have been able to lessen the time for customs clearance by adding people. And Federal Express has done a lot to help the customs situation in Japan, but the Japanese Government has done virtually nothing.

Senator MURKOWSKI. Why doesn't Japan allow you, Mr. Cloud, to use your own trucking service? I assume when you ask them or say you'd like to, what do they tell you?

Mr. CLOUD. There is a monopoly trucking company that operates schedules between Narita and Baraki, and the Japanese like it that way.

Senator MURKOWSKI. Who owns that?

Mr. CLOUD. As far as I know, it's owned—I am not certain who owns it. I understand——

Senator MURKOWSKI. Does anybody know who owns it?

Mr. FORT. I believe it is a subsidiary of JAL, sir.

Senator MURKOWSKI. Our information indicates—do you know, Mr. Dole, or do you, Mr. Angevine?

Mr. DOLE. No.

Mr. ANGEVINE. No.

Senator MURKOWSKI. I think it would be something worthwhile for you folks to look into. I know if I were in business, I'd sure know.

Mr. Fort, what impact does restriction on the Tokyo-Anchorage-European route have on Tigers' ability to provide competitive service from the Orient to Europe?

Mr. FORT. Well, we can't fly the routes, sir. That's a pretty profound impact.

Senator MURKOWSKI. But JAL can fly the route?

Mr. FORT. JAL is flying the route presently as is NCA flying the route presently.

Senator MURKOWSKI. Two Japanese carriers are flying the route.

Mr. FORT. That's correct, sir.

Senator MURKOWSKI. And you are the cargo carrier of large size cargo. You are not flying.

Mr. FORT. We cannot provide direct freighter services over the——

Senator MURKOWSKI. Because the Japanese do what to you again? They won't let you do what?

Mr. FORT. Well, the condition that they would impose on that operation would require that we offload at Anchorage 50 percent of the cargo for services originating in Tokyo or——

Senator MURKOWSKI. So, it's uneconomic.

Why don't we respond to the Japanese, Mr. Dole or Mr. Angevine, and simply say, "Hey, now if you don't stop that, we're going to make you do it"?

Mr. DOLE. As a matter of fact, that is one of the things that we asked of the Japanese before the September 19 talks. We demanded that, in fact, they provide JAL and NCA——

Senator MURKOWSKI. Why didn't you just tell them you're going to do it if they don't take their restrictions off?

Mr. DOLE [continuing]. Provide data.

I'm sorry?

Senator MURKOWSKI. Why don't you just tell them you're going to do it; that is restrict their service as they restrict ours, unless they knock it off? I'm sure the thought occurred to you.

Mr. DOLE. Yes, sir.

Senator MURKOWSKI. Well, why didn't you do it?

[Pause.]

Senator KERRY. Did you recommend it to anybody? Did somebody else veto it?

Senator MURKOWSKI. Come on Senator. You just can't wait to get in on it. [Laughter.]

John, I wouldn't have done that to you.

Mr. DOLE. Senator, as a matter of fact, we were recently told that the Flying Tigers could fly the route for 179 days if, in fact, they provided some data in terms of the origin of the cargo. There is that opportunity to fly.

Senator MURKOWSKI. I thought DOT and State said that by providing the information, it was in violation of the bilaterals. Isn't that a round circle conflict?

Mr. DOLE. That is a problem, yes, sir. What I'm saying is that in Japan——

Senator MURKOWSKI. I don't want to pursue this.

Mr. DOLE [continuing]. In Tokyo they said that, in fact, we could fly the route if we—they haven't said no I guess is what I'm saying.

Senator MURKOWSKI. This is for Mr. Fort. How do you compare the barriers you face in Japan vis-a-vis other countries? You're a worldwide organization. You've been at it a long time. You've made money; you've lost money. You've been up; you've been down. But you've been over there a long time.

Mr. FORT. I think it is a very serious question, Senator, and I would like to submit an answer for the record.

Senator MURKOWSKI. All right.

Mr. FORT. But I will say this that there are a number of countries where we do face and encounter similar problems. We've had problems, as we do in Japan, in Korea, in Taiwan, and I can go on and name others. But I would like to give you a detailed answer that addresses the question.

Senator MURKOWSKI. All right.

[The information referred to appears in the appendix.]

Senator MURKOWSKI. My time is almost up. Mr. Cloud, would you care to answer the question briefly, or do you want to——

Mr. CLOUD. We certainly have more difficulty serving Japan than any other of our international locations, which are not nearly as many as Flying Tigers. It's that simple. They are much more difficult than any other country.

Senator MURKOWSKI. Do you envision that the barriers against your ability to provide the service you want to provide are intended to give potential Japanese carriers time to gain a larger market

share? In other words, is this lengthy negotiation process—we've already talked about 3 years—is this a preconceived plan? There's nothing wrong with it. It's business. Give them more time to get a greater market share recognizing that if Mr. Dole comes down and says, "Hey, if you don't allow us the same access, we're going to cut you off or respond." And, of course, they're buying time by this. Is this perhaps a significant ploy in the negotiations?

Mr. CLOUD. The Japanese know precisely what they are doing in keeping Federal Express out of the Japanese market, and it is certainly to their advantage and to our disadvantage and the disadvantage of the United States.

Senator MURKOWSKI. My last question. Do either of you gentlemen care to identify specific sanctions that you would recommend at this time based on the general consensus that we've been looking at this thing for 3 years? We've got the same thing again. You have the two carriers, the testimony, the frustration, and the gross inequity. Either one first. That's my last question.

Mr. DOLE. I would say that again we are prepared to deny, if necessary, Japanese flights into this country. That is probably at one end of the spectrum. And, too, as the chairman suggested, there are other things we could do in the interim that aren't as drastic—administrative.

Senator MURKOWSKI. Thank you. And you have acknowledged that you have the authority at the Department of Transportation.

Mr. DOLE. Yes, sir, under section 2(b) of the International Air Transportation Fair Competitive Practices Act.

Senator MURKOWSKI. State Department, would you care to comment again on sanctions recognizing the attitude of Senator Kerry and myself?

Mr. ANGEVINE. We appreciate the expression of opinion. It's very clear. There is no misunderstanding about that.

Senator MURKOWSKI. And what is your reaction to it?

Mr. ANGEVINE. Our reaction to it is we have a very serious problem with the Japanese. We recognize that.

Senator MURKOWSKI. So, what are you going to do about it?

Mr. ANGEVINE. We have indicated to the Japanese that sanctions are out there if we cannot resolve that problem quickly, and if we don't resolve that problem quickly, then we are going to have to look at sanctions very seriously. I don't feel it is fair to you or to anyone else to try to pin this down as a matter of days.

Senator MURKOWSKI. I'm not asking you for a matter of days. We've been at it 3 years. What is the State Department's interpretation of "quickly"?

Mr. ANGEVINE. You want to see us again in January. We certainly should have something, say, by January.

Senator MURKOWSKI. All right, I guess, Mr. Chairman, I got my answer.

Senator SANFORD. You say sanctions are out there, but aren't there steps short of sanctions that might be taken more hurriedly?

Mr. ANGEVINE. I think perhaps what you are referring to is there are levels of sanctions, and that is very clear. And that is one of the things that we will want to look at.

Senator SANFORD. Would want to look at.

Mr. ANGEVINE. That's right. I'm sorry if you do not understand me. Maybe you could clarify why you're puzzled.

Senator SANFORD. Well, you've been looking at them.

Mr. ANGEVINE. That's right. We have been looking at them, but we have not yet made a decision. But when the time comes to impose sanctions, we will want to look very carefully at the range of sanctions available to us and make a decision at that time as to what the appropriate sanction would be.

Mr. DOLE. Again, it's the Department of Transportation's position that we are prepared to go forward with sanctions earlier rather than later.

Senator SANFORD. Senator Kerry.

Senator KERRY. Mr. Chairman, I know you wanted to move on to the next panel.

Senator SANFORD. I'll put a 5-minute note on here.

Senator KERRY. Fine. I think it will be shorter than that.

But I would just note that Flying Tigers—3 years ago the vice president came before this committee and told us about the problem that Senator Murkowski has asked about, and he has brought up the issue of the intervening 3 years.

But just to underscore what I was saying, I gather that finally in the intervening time, Tiger got the ground handling permission, but then they were denied the space. So, effectively they got permission which was useless because they had nowhere to put it to use. Is that accurate, Mr. Fort?

Mr. FORT. That's right, sir.

Senator KERRY. So, this is the game that is played. Aren't you basically embarrassed by the level of disadvantage we're laboring under? Doesn't it embarrass you a little bit?

Mr. DOLE. I can't say that I can point with pride for the administration at every one of the issues that we have addressed with regard to the Japanese.

Senator KERRY. I think it makes us look like fools. I feel sorry for America in this circumstance. And I really hope that we are not going to sit here, as Senator Murkowski said, and come back—I will tell you this. This committee I sense—both the chairman and the rest of the members, aren't going to let us wait 3 years, and the Congress isn't. And maybe the American people won't, and they'll make a decision in November. But I sure hope that we're going to try to rectify this. Enough said.

I do want to submit questions. I have some questions on the trucking, on the construction, on the ownership issues and on the Northwest Airlines. I'm going to submit those for the record in writing, Mr. Chairman.

[The information referred to appears in the appendix.]

Senator MURKOWSKI. I have some questions for the record.

[The information referred to appears in the appendix.]

Senator SANFORD. Yes, we will keep the record open. We will ask you to respond to some specific questions instead of taking additional time now.

Thank you very much for coming.

I would like to ask now Maureen Smith, Mr. Richard Self, Mr. Chalpin, and Mr. Prestowitz to come forward. Thank you very

much for coming. We are going to move right along because apparently we have a vote.

I think if we might ask Ms. Smith, the Deputy Assistant Secretary for Japan, the Department of Commerce, first. Thank you for being here, and we would be pleased to have your statement. And, again, I suppose given the time, if you could hold it to about 5 minutes, and then we will put all these statements in the record.

## STATEMENT OF MAUREEN SMITH, DEPUTY ASSISTANT SECRETARY FOR JAPAN, DEPARTMENT OF COMMERCE

Ms. SMITH. Thank you very much, Mr. Chairman. I have also submitted a more lengthy statement with additional details which I would like included in the record if I may.

Senator SANFORD. Very good. Thank you.

Ms. SMITH. It's a great honor for me to be here today, and I'm very pleased to be able to testify on this subject. We have been working on it for over 2 years, and that is the access of United States companies to the Japanese market.

I would like to use my time to basically summarize the agreement we have negotiated, tell how it is working, and most important to describe the actual business results to date. I will also indicate some upcoming contract decisions which we are watching closely and suggest, if I may, some considerations for viewing the agreement in a broader perspective. After that, I'd be very happy to answer any of your questions.

To understand what our agreement is all about, we really have to go back and look at where we started. Over the past 40 years, there had been only one public works contract awarded to an American firm in Japan, and that firm had been unable to complete the job. Our firms could not even be considered for work on major Japanese construction projects unless they had been licensed by the Ministry of Construction and, of course, they could not get a license unless they had done work in Japan.

Last March we reached agreement with the Japanese Government on some procedures which will, in fact, allow our firms to enter and compete in the Japanese construction market. My statement for the record, as I said, details this agreement, but some of the more salient aspects are as follows.

The basic concept was to give our companies an opportunity to compete on a list of designated projects worth approximately $17 billion which would provide them with sufficient experience and sufficiently broad experience to enable them to become licensed for full-scale participation in both the public and private construction market in Japan.

For Kansai Airport, the Tokyo Bay Bridge, the new NTT headquarters building, and projects directly managed by the Government of Japan, the procedures are very similar to our own Federal procurement regulations. They spell out exactly what a firm needs to do to register, apply, and bid the construction work in Japan. A company can now track its progress through every step in the process. If a company fails to win a contract on which they have bid, an explanation is required upon request within 90 days.

On probably the most visible issue, a company can apply for a license based entirely on foreign experience and credentials and get that application processed within a standard period of not more than 120 days or get an explanation from the Government of Japan.

For projects commissioned by mixed private and public entities, a policy of nondiscrimination will be followed, including the use of nondiscriminatory standards and the establishment of contact points to facilitate foreign participation. Because of the high level of business interest in terminals, the Government of Japan will "be sure" that nondiscriminatory procedures are followed for terminals at Hiroshima, Kitakyushu, and Haneda Airports.

It has been my experience that the success of any agreement we negotiate with Japan is ultimately determined by the investment which the United States side—and that includes the affected American industry—is prepared to make in that implementation process.

As could be expected, the Government of Japan is meeting its obligations under the agreement. The Japanese have announced all bid and registration dates so far. They have provided a list of contact points. They have held the explanation meetings as scheduled, and they have provided the master plans, registration forms, and other information required to us and to our companies. The Ministry of Construction has published in English a guide to obtaining construction licenses.

We held the first meeting of our monitoring committee September 6 in Tokyo.

The Japanese have established five internal committees, including one in the Ministry of Construction regarding foreign construction materials and one in the Ministry of Transport to oversee compliance with the agreement. We are learning more about those, and we feel the most important point is that we have made it clear that improving transparency will be an ongoing effort which goes beyond setting up contact points and providing master plans.

What do we have to show for all this activity? These are some of the business results that we have to date.

U.S. companies have won an estimated $16 million in business from the Kansai Airport Authority. This includes over $10 million in construction equipment, $1.3 million in consulting services, close to $1.2 million in telecommunications equipment.

Otis Elevator has been awarded a $20 million contract for people movers at Narita. Nine joint ventures have been formed between American and Japanese construction companies.

Looking ahead, there is the design for the terminal at Kansai Airport on which five American companies are on the short list of designated bidders. Also on Kansai, applications are due on October 22 for ground facilities design. And finally, the NTT headquarters master plan should be available by the end of this month.

Over the longer term, if I may, I'd like to urge the committee to consider three points in putting this agreement into its proper perspective.

First, we are attempting to take a measurement a scant 4 months after signature of an agreement designed to change behav-

ior that is over 40 years old. We should not succumb to excessive expectations.

Second, the object of this agreement goes well beyond the 14 covered projects. These are viewed as a starting point to acquire the necessary experience to be able to work in the public sector and especially in the Japanese private sector. We have already seen some activity in this area. Chairman Kobayashi of Shuwa Corp. has invited American companies to bid on a 13-building development covering over 2 million square feet in downtown Tokyo and to assist those companies in obtaining the necessary licenses.

Finally, the scope of the agreement even goes beyond Japan itself. The tieups, the joint ventures that we identified, in areas which are clearly the Japanese export industries of the future, port redevelopment, offshore islands, intelligent buildings are viewed by our industries as the vehicles to access Japanese financing and business ties in third countries, especially in East Asia so that it may be when we attempt to draw a bottomline on this agreement, we really do have to broaden the angle of our lens, Mr. Chairman.

Thank you very much.

[The prepared statement of Ms. Smith appears in the appendix.]

Senator SANFORD. Thank you very much.

Mr. Self.

Mr. SELF. Mr. Chairman, I have no opening statement.

Senator SANFORD. Well, I appreciate that. [Laughter.]

Mr. Chalpin.

## STATEMENT OF MARK CHALPIN, VICE PRESIDENT, GOVERNMENT AND INTERNATIONAL AFFAIRS, NATIONAL CONSTRUCTORS ASSOCIATION, ON BEHALF OF THE INTERNATIONAL ENGINEERING & CONSTRUCTION INDUSTRIES COUNCIL

Mr. CHALPIN. Thank you, Mr. Chairman, Senator Murkowski. I am Mark Chalpin, Vice President of Government and International Affairs for the National Constructors Association. I am here today in my capacity as spokesman for the International Engineering & Construction Industries Council, IECIC, on the subject of reciprocal trade of design and construction services with Japan.

IECIC is an umbrella organization comprised of the American Consulting Engineers Council, the American Institute of Architects, the Associated General Contractors of America, and the National Constructors Association.

The importance of the U.S. design and construction industry to the U.S. economy and to jobs for Americans should not be underestimated. The U.S. construction market is $400 billion per annum and constitutes approximately 8.5 percent of the Nation's GNP. In 1987, 54 percent of public and private investment in this country was in construction projects. The U.S. construction industry employs approximately 6.2 million Americans.

In the international market, U.S. contractors are the world's leading exporters of construction services with 18.1 billion dollars' worth of new contracts in 1987 by the top 40 U.S. international contractors. U.S. international design firms are also the top exporters globally with the top 60 U.S. firms being awarded more than 1 billion dollars' worth of new contracts in 1987. In addition, every $1

billion in total U.S. revenues generated by U.S. design and construction exports results in approximately 24,000 jobs for Americans.

Reciprocal trade of design and construction services between the United States and Japan has become an especially contentious issue since early 1986 when Senator Frank Murkowski and the Department of Commerce brought to the public's attention the lack of access for U.S. design and construction firms to the $8 billion Kansai International Airport project in Osaka Harbor.

The imbalance in trade of design and construction services between the United States and Japan has grown steadily during this decade. Japanese contractors rapidly increased their work in the United States from $50 million in 1982 to $2.2 billion in 1987. At least two-thirds of their work is on Japanese-owned investment projects as opposed to United States public works or United States privately owned projects. In view of the rapid increase in Japanese investment in this country, IECIC is concerned that significant work by Japanese contractors on Japanese-owned investment projects is going undetected.

United States design and construction firms are encountering increasing difficulty in competing on Japanese-owned investment projects in the United States. United States firms are losing contracts in this country in some instances to Japanese contractors with less technology and experience on the projects involved. Based on the extreme difficulty that United States design and construction firms now face in competing for work on Japanese-owned investment projects in this country, IECIC estimates that Japanese contractors now perform an overwhelming percentage of the construction work on those projects. This leads IECIC to believe that the Japanese owners and contractors have transported the noncompetitive procedures and protectionist barriers that they use in Japan to their investments in this country.

In the Japanese market, United States contractors have not been awarded a major construction contract since 1965. In fact, in 1986 United States contractors built a total of one Mrs. Fields cookie stand in Japan.

Japanese bureaucrats and the Japanese construction industry keep saying that United States design and construction firms are not trying hard enough to enter the Japanese market, that they must learn the language, culture, business practices, and laws. This claim has three fundamental flaws.

One, while the Japanese like to paint the construction trade issue as a bilateral problem between the United States and Japan, Korean, and Western European contractors are having no more success than are United States contractors in working in Japan.

Two, whatever the knowledge of United States contractors of the Japanese system, the Koreans certainly have learned from close contact over centuries how Japan functions and are still unable to build in Japan.

Three, when the top exporters throughout the world of construction services are not working in the world's second largest construction market—that is, Japan's—the focus should be on that market rather than the exporters.

To further illustrate the difficulty United States contractors have encountered in working in Japan, it should be noted that United States contractors have been associating with Japanese contractors for up to 20 years. Yet, until recently, those cooperative efforts have universally involved projects in third markets and the United States-Japanese contractors have been more than willing to discuss projects outside of Japan but have fallen strangely silent on projects in Japan.

As for the status of trade of design and construction services between the United States and Japan since May 25 when the arrangement was announced, we cannot report favorably. As of May 1, 26 U.S. firms with a design and or construction capacity had registered for the Kansai project. IECIC remains optimistic that U.S. firms will be awarded contracts on the specified 14 projects. However, we have yet to see any results in the way of contracts. More ominously, IECIC has seen no change in the attitude and behavior of Japanese owners that would indicate a genuine intention to open the Japanese design and construction market.

IECIC thinks that the fact that at least 26 United States firms have registered for the Kansai project indicates a serious effort to test the intention of the Japanese to honor their commitment to open their market. However, there is going to be a limit to the number of United States firms willing to invest the large amount of capital required to operate in Japan and pursue purported opportunities as long as the Japanese do not demonstrate by their attitudes and actions as evidenced by marketplace results that United States firms are welcome to compete on an equal basis with their Japanese counterparts.

Mr. Chairman, in conclusion, IECIC believes that the trade imbalance in our industry with Japan is growing worse due to the Japanese unwillingness to allow United States design and construction firms to compete on an equal basis with Japanese contractors in Japan and predatory trade practices by the Japanese in this country. IECIC appreciates the pressure that the Congress has brought to bear on Japan to open its construction market to United States design and construction firms. IECIC urges the Congress to continue to pressure Japan to open its market by sending a clear and constant message that the United States will not tolerate the current grievous imbalance.

On behalf of IECIC, I wish to thank the subcommittee for this opportunity to testify.

[The prepared statement of Mr. Chalpin appears in the appendix.]

Senator SANFORD. Well, you will be pleased to see that Senator Murkowski is still here on the job, still pursuing it.

Mr. CHALPIN. We certainly are.

Senator SANFORD. Now I would like to call on Mr. Prestowitz.

**STATEMENT OF CLYDE PRESTOWITZ, FORMER SPECIAL ADVISER ON JAPAN TO THE SECRETARY OF COMMERCE, POTOMAC, MD**

Mr. PRESTOWITZ. Thank you, Mr. Chairman. I want to just make a few opening remarks.

I testified before the committee in June 1986. At that time ——

Senator MURKOWSKI. Three years ago.

Mr. PRESTOWITZ. Three years ago. That's right. And at that time I urged that the committee or that the U.S. Government focus on results rather than process. And I would really like to revert to that.

The construction industry in Japan is probably the least open market of any Japanese market. It is highly organized according to the notorious dango system. Bidding and free market competition does not take place within Japan. The industry is highly political. It is closely related with Japan's Liberal Democratic Party. And I think that aside from a few token contracts, you are not going to see significant bids being given to American companies as long as the question is a matter of procedure. The agreement is really beside the point.

You have seen, in the testimony preceding this panel with regard to air traffic with Japan, how easy it is for apparent procedural opening steps to be taken and how easy it is for those to be sabotaged. Anytime that we ask for procedural measures and procedural solutions in Japan, implicit in that request is the assumption that the Japanese understand our idea of open, and the fact is that they don't. And so, we will never get the results that we anticipate.

So, I feel that again what you have to look at here is results. And the focus here should not be on whether Japan has kept the agreement or whether the procedures are adequate or not. The focus should be on whether we are getting any sales. And until we get some significant sales, the agreement is really not very significant.

Thank you, sir.

[The prepared statement of Mr. Prestowitz appears in the appendix.]

Senator SANFORD. Well, thank you very much.

I want to put in the record here a comment and ask for your reaction, particularly Ms. Smith and Mr. Self, because I think that we have seen from the testimony that we have had in the panel prior to this one, as well as this panel, that there has been a delay, if not a reluctance, to negotiate in a firm manner. We haven't had a chance to demonstrate that with this panel, but certainly an indication that months and then years go on and we don't really get to the point of doing something.

What has bothered me is the possibility of a revolving door. Maybe we have a structural flaw here in our own system. I know my colleague has been vocal in this concern over several years.

The situation first came to my attention in connection with the textile negotiations. I, being from a textile State, have been concerned with that where Wallace Lenahan, a Deputy Assistant Secretary for Textiles and Apparel, left the Commerce Department and immediately began advising the government of Hong Kong and the China National Textiles Corp., among others, on strategy for textile negotiations with the United States. Our then chief textile negotiator stated at the time that there was evidence that the U.S. negotiating position had been compromised, to say the least.

Now, I understand Bill Houston, the chief negotiator of the United States for textile matters and his chief deputy, Ron Sorini, are leaving the Government. It was less than a year ago right in

this room, October 7, that this subcommittee held a hearing on an expedited basis to accord Mr. Houston the rank of Ambassador so he might more fully arm himself for negotiations with the Chinese, among others. His confirmation to the rank of Ambassador was agreed to by the full Senate less than a month later.

And of equal concern are the actions of Bob Watkins in connection with auto parts negotiations.

Now we have similar allegations in connection with the Kansai Airport construction negotiations, and I am referring to the status of J. Michael Farren who was our lead negotiator on the Kansai matter, and the influence that may have been exerted by the Japanese construction industry through its Washington representatives, Global USA. As we all know, Mr. Farren was highly regarded as a tough and effective negotiator with the Japanese who left the Commerce Department in the middle of the talks. And I have here two articles: One from the New York Times, March 4, 1988, and the other from the Journal of Commerce, the same date, which I am putting in the record.

[The information referred to appears in the appendix.]

Senator SANFORD. So, I would like to have the comments of the Commerce Department and the trade negotiators. Is this not a situation that weakens our ability? Is this a flaw? Is there something that needs to be done about this? Should Congress pay special attention to this kind of action which seems to be repeated too often?

Mr. SELF. Mr. Chairman, first of all, the revolving door issue, which I think you made reference to, is a legitimate one. We have rules that pertain to it, and the extent to which it is undermined I think undermines the entire process. That almost goes without saying, but we are obviously as a government committed to protecting the interests of the United States. And to the extent to which there is a evolving pattern of the kind you described, I think that is unhealthy.

I think in fairness to some of the individuals—maybe not all, but to some that you mentioned—it is more commentary—and this is strictly a personal comment, but it's more commentary on—what shall we say—the competition of the marketplace. And what I happened to see in I think this morning's Washington Post about Government salaries—eventually that becomes a factor as to someone's decision to leave Government for those reasons alone as opposed to joining the other side and undermining his government or her government because of what they know is going on in the operation.

But we do have rules regarding those specific kinds of activity, and that is at least one safeguard that I think everyone has to follow. That is about all I can say frankly.

Ms. SMITH. I think I should comment on the particular example in the Department of Commerce and this agreement to which you referred. I have no personal knowledge that Japanese lobbyists broadly described, or particularly Global USA, were involved in any way in the decision by Mr. Farren to leave the Department of Commerce. As a matter of fact, that allegation has specifically been denied.

I worked with Mr. Farren very closely on the negotiation of this agreement, and I think that the learning, if you will, that we are to derive is that we had a united interagency team on our side which

was able to bring the negotiation to an effective conclusion in his absence.

Senator SANFORD. Well, thank you very much.

Mr. PRESTOWITZ. Mr. Chairman, I wonder if I could comment on this question?

The revolving door syndrome makes us virtually helpless in dealing with the Japanese. We never have people or rarely have people who have an institutional memory. We rarely have people who have any expertise about what they are negotiating about. And as you mentioned, in the case of some of those instances, we have people who are sometimes looking for where the next job is outside the government.

Beyond that, I can virtually guarantee you that sanctions will not be imposed either in the case of construction or, despite the comments of the Assistant Secretary of the Department of Transportation, in the case of the air traffic agreement. The reasons sanctions won't be imposed are the following.

One is that they will be opposed within the Government by the State Department, the Council of Economic Advisers, the Office of Management and Budget, the Treasury Department, the National Security Council, the Defense Department, possibly the U.S. Trade Representative, and the Justice Department---

Senator SANFORD. The Japanese don't need a representative in this country, do they? [Laughter.]

Mr. PRESTOWITZ [continuing]. And probably the White House staff.

Second, what will happen is that a proposal will be made to—I'm sure it has already been made—consider some kind of sanctions. And the way this typically happens is that the Secretary of Commerce or the U.S. Trade Representative or both go to the President and they say, Mr. President, egregious things are happening in trade. And here's the evidence. We have to do something about it. And the President says, "By golly, you're right."

And at that moment, the Secretary of State, the National Security Adviser, the Secretary of Defense run into the room and say "Wait, wait, wait, Mr. President. You remember they voted with us in the U.N. last week, and we need those bases, and they're giving money to Cory Aquino or whatever it happens to be."

Now, in any single instance—in any single instance—the trade issue cannot be seen as of the same level of significance as our overall diplomatic relationship with a major ally or our negotiations with the Soviets or what have you. So, it gets shoved under the rug in favor of the overall relationship. But as your late colleague, Senator Everett Dirksen, used to say a billion here and a billion there, and pretty soon you are talking about real money. And we are now talking about real money.

A third reason that sanctions won't be imposed was explained I think by a recent cartoon in Time magazine. The year was 1992. There was a fracas in the Middle East. The Japanese Prime Minister is on the phone to the President. He says, "Mr. President, would you please move the Seventh Fleet to the Persian Gulf. If you do, I can assure you that the Japanese insurance companies will show up at the Treasury's bond auction on Thursday as they normally do." [Laughter.]

Mr. PRESTOWITZ. Mr. Chairman, we don't have any leverage. And the sanctions won't be imposed unless, frankly, you do something down here. I don't believe you can expect it from the industry. I don't believe you can expect it from the administration. I think that the protector of American interests is ultimately the Congress, and you will have to take some action.

Senator SANFORD. Well, that is mighty good advice. [Laughter.]

I don't really want to use this quotation, but you made my day. [Laughter.]

You testified, Ms. Smith, that we had some success with the agreement that is now just a few months old. And we had $10 million at one place and $20 million in a people mover. But we really haven't had any services there except for $1.3 million for consulting, whatever that was.

Now, how many firms made bids at the time these were awarded? How many people made bids or how many companies made bids that were not successful in receiving a contract?

Ms. SMITH. In the services area. You are talking about in the services area or are you talking about American companies who have bid on construction or something like this?

Senator SANFORD. The contract said that you had 14 projects that they could bid on, and the procedures were all laid out. And if they didn't get it, they got an explanation. Now, how many got the explanation instead of a contract?

Ms. SMITH. I apologize for that. That's perhaps misleading. Those projects will be implemented over a 10- to 15-year period. Many of them are still on the drawingboard, have yet to be approved by the Government of Japan so that I cannot give you a number of American companies who have submitted bids and been turned down. We have not gotten to that stage yet.

Senator SANFORD. Well, surely somebody got turned down for the people mover. If Otis got it, somebody else didn't get it.

Ms. SMITH. To my knowledge, there was not an American competitor for Otis on that.

Senator SANFORD. I understand that, but I mean certainly with the three or four things we got, there were many, many other projects or contracts or bids out at that time, were there not?

Ms. SMITH. Yes. And if the question that you're asking is for every one of those areas where I have identified a contract that has been let to an American company that we identify the losing bidders on that, I would like the opportunity to submit that for the record because quite frankly that would involve some research on our part.

Senator SANFORD. Thank you very much. But it would seem to me to be significant if it looks like we got 3 of 4 contracts, did we lose 30, and if so, what was the explanation? Have they complied with the requirement that they provide an explanation?

Ms. SMITH. Yes. I will submit that for the record.

Senator SANFORD. Thank you very much.

[The information referred to appears in the appendix.]

Senator SANFORD. I think that I might submit some additional questions, but right now in the interest of time, I am going to call on my distinguished colleague.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Prestowitz, I think your reflection on the reality that you were here 3 years ago speaks for itself. I don't know that I necessarily am willing to agree to giving up to the suggestion of inevitability of the process which I think might be your bottomline.

I have had an opportunity to spend a little time with your book, "Trading Places." For any in the audience that are curious to know a chronology, why, I would certainly recommend it to every member of the committee. I'm not going to give a book report on it, but for those in the audience, they might find it probably the best analysis of the United States-Japan trade problem available.

Now, I happen to be one who thinks that we are going to come back here in January and address two issues. One is going to be the accumulated debt of the United States which is in excess of $2.5 trillion. I came to Congress in 1981, and I was at a budget hearing, although I'm not on the Budget Committee. But I had to get a padlock for my garage. I didn't know what to set the padlock to, but I had recalled with great concern that our accumulated deficit at that time in early 1980 was $757 billion. So, every time I go to my garage, why, I relate to the reality of what the accumulated debt was in 1980, $757 billion, and the fact that it is $2.5 trillion and growing. That should get everybody's attention.

Senator SANFORD. You need a bigger lock.

Senator MURKOWSKI. Well, I can't get one with enough combinations to go that high, Mr. Chairman, but you're quite right. [Laughter.]

The other issue that I think is going to be paramount in the Congress is the issue of foreign ownership in the United States. I don't say this to be detrimental by any means, but we need to be aware of the significance of it. We need to ask whether we should or shouldn't or want to do anything about it. It should be looked at, understood by the American people.

So, with that particular focus, Mr. Prestowitz, you go to the bottomline and suggest that we should focus in on whether we're really getting any solid results. Now, we have heard from Ms. Smith with regard to an estimated $16 million in business on the Kansai, $10 million for construction equipment. Is that $10 million Caterpillar equipment that is going to be built in Peoria or is it a joint venture with Mitsubishi, and is it going to be built in Japan?

Ms. SMITH. It is Caterpillar-Mitsubishi. It is almost $7 million of Caterpillar-Mitsubishi. Caterpillar tells us that the bulk of that will be out of Peoria.

Senator MURKOWSKI. That is good news. And that is a contract that has been signed.

Ms. SMITH. That has been signed.

Senator MURKOWSKI. But it is important to note that that is a contract for equipment——

Ms. SMITH. Yes.

Senator MURKOWSKI [continuing]. And does not represent a contract in the sense of construction.

Now, have we signed any construction contracts?

Ms. SMITH. We have signed some contracts with Bechtel in the consulting area, but there have not been construction contracts per se.

Senator MURKOWSKI. Mr. Chalpin, is that your information as well?

Mr. CHALPIN. Yes, that is. As far as I know, there have been no design or construction contracts awarded to U.S. firms since May 25.

Ms. SMITH. If I may, I think that's a little bit a function of the time horizon which is why I tried to identify——

Senator MURKOWSKI. I'm glad you mentioned the time horizon. Go ahead.

Ms. SMITH. For example, on the terminal at Kansai Airport, which is one of the areas that we are very, very interested in, we are only now moving in to the design phase from the concept phase.

Senator MURKOWSKI. The agreement that was signed by Secretary Verity and Ambassador Matsunaga was very gratifying because I think it marked an important first step. But it will be implemented over 15 years and it's gradual. The problem is we don't have anything positive to show for it in the area of construction services right now, which we've acknowledged.

Now, we say that the Bechtel contract is of some significance, but it is my understanding——

Ms. SMITH. It's consulting. It's consulting.

Senator MURKOWSKI [continuing]. It's only $200,000.

Ms. SMITH. I said that we have contracts with a firm in the construction business, but it's with Bechtel for consulting work. It's with Bechtel Civil but for consulting work.

Senator MURKOWSKI. It's not a big contract as far as Bechtel is concerned.

Ms. SMITH. No. They total——

Senator MURKOWSKI. $200,000 is not——

Ms. SMITH. There actually two with Bechtel and it is under $500,000; yes.

Senator MURKOWSKI. Now, as we relate to this opportunity to bid on Kansai and Tokyo Bridge and all the other public works projects which we have identified, the Japanese private contracting firms have enjoyed open access in the United States in bidding in both private sector and public works projects. Is that correct?

Ms. SMITH. That is correct; yes.

Senator MURKOWSKI. No restrictions of any consequence.

Ms. SMITH. I think that we have agreed on that point that they have access to this market; yes.

Senator MURKOWSKI. Now, Mr. Prestowitz, you've indicated, "Where do we go from here?" And you said Government wasn't going to do it because they haven't done it, so their track record leaves a little bit to be desired.

Now, Congress did something. We put in the Brooks-Murkowski amendment in response to a lot of concern. The State Department thought that was the worst possible thing we could do because you don't do those kind of things in a diplomatic sense. But we responded because we were talking about equity. They enjoyed access to our markets. We only wanted the opportunity to go in and bid.

So, Government didn't do it with the 301, did they? USTR thought a lot about it. Your, Mr. Prestowitz, observation of the process I think was right on target because I've heard the inter-

agency discussions on the 301, 302, so forth and so on. It is a very difficult birth process, and I won't go through it here.

But in any event, Congress finally did something. As a consequence of what Congress did, I think Secretary Verity would acknowledge that we started a process where we got together and have identified something, and now we are waiting for something to hatch. It hasn't hatched. Ms. Smith, you give us a very encouraging report. Mr. Prestowitz says for his part, "OK, where's the beef."

So, we have to keep our eye on the ball, and that's the purpose of these hearings, to evaluate where we are going. We have already evaluated the air transportation negotiations going back 3 years and don't have too much to show. It is gratifying that the administration is going to have a surprise for us when we return. But I'm going to believe that when I see it.

Now, I'm going to get a little more personal here and ask you. Do you need Congress to mandate legislation like Brooks-Murkowski which will basically terminate in October? Do you need that direction from the Congress, or do you have the initiative to control it yourselves? Mr. Self.

Mr. SELF. Senator, on the basis of what happened on May 25 of——

Senator MURKOWSKI. On May 25.

Mr. SELF. That's correct. That was the moment. And that has been I think a 4-month period. As Maureen Smith pointed out, you have had a relatively brief period of time in my judgment to assess whether or not you are going to have a failure.

You already, as she has indicated, have some specific contracts. It's a small percentage of the Kansai project, but it is a start. And I think it is our judgment it would be very difficult and really unfair to the entire process to in effect implement Brooks-Murkowski which expires at the end of this month which in our judgment would prejudice the understanding that was reached very recently.

Senator MURKOWSKI. Well, let's talk a little bit about that. If we have this legislation on the books and nobody is in violation of it; what is there to fear?

Mr. SELF. Well, I think it gets down to the spirit of the agreement.

Senator MURKOWSKI. It says any country. This one said Japan because USTR, you people, said they were in violation. You picked them out.

Mr. SELF. Yes, sir.

Senator MURKOWSKI. And we're saying let's renew it and not mention any country, but if you say a country is in violation, bingo. What's wrong with that?

Mr. SELF. We did in January, but that was prior to what was reached at the end of May. I think that set forth a process that I think deserves——

Senator MURKOWSKI. You are not answering my question, though. If we don't name a country, simply have it out there, then any violator that you determine will be sanctioned, so to speak. Now, what is wrong with that kind of a philosophy?

Mr. SELF. My concern is that it may have an effect on the process.

Senator MURKOWSKI. It did have an effect on the process last time. It was a very positive one because do you think you would have had an agreement without Brooks-Murkowski?

Mr. SELF. We may not have.

Senator MURKOWSKI. Yes, I think it is fair to say "No."

Now, I just don't understand—I may understand the pressures that you are under from USTR, but I don't understand the logic of how you can defend not having a tool when it is generally from the standpoint of the track record agreed that the administration, because of the diplomacy in the State Department and the pressures and everything Mr. Prestowitz commented on and the reality that you need some tools from Congress—we throw the tools at you. We'd eliminate naming any country, just leave it there. And you don't want to bear the responsibility of having that tool if somebody gets out of line?

Mr. SELF. I think it was a useful tool to have before you had any resolution to the issue. And our judgment is that based on what happen at the end of May, that it's going to possibly undermine a process that will mean something to our industry.

Senator MURKOWSKI. Well, I don't know that I agree with your logic, but you certainly are expected to express yourself. It seems to me if we let Brooks-Murkowski end, how are we going to ensure progress when we still don't have any contracts? We don't have a construction contract of any kind. If we don't keep the pressure on—you know how to negotiate as well as I do. You negotiate from a position of strength. Now, if you dump off the only thing you have going for you, other than you always have the opportunity to initiate the 301, but you don't do it. You have no history of it. The last time we had any experience in it was with the semiconductor. And by the time we got around to doing anything, 6 years had passed, and we lost the industry. Now, that's our track record.

And I don't know why we don't learn by experience around here. And I am sorry. I respect the policies of the administration and the diplomacy, and I know how uncomfortable they feel about having Congress do things for them. I can assure you that most of us would much rather have the proof in the administration's ability to use the tools that we give them.

But if you don't do it, we're losing market share. The American construction industry is caught in a squeeze. Where are they going to go? As we leave our markets open, appropriately as we should, for foreign contractors to come into the United States, the domestic market gets smaller. If we can't go overseas, we as an industry, a construction industry, have a smaller fishbowl to work in. That is the reality of what is happening; isn't it?

Mr. SELF. Yes, sir.

Senator, I think Maureen Smith made an important point in her testimony, and that is the final reckoning of this episode is the contracts that we receive, what someone called the bottomline. If we are unable to achieve results over time, I think we are in a position that will allow us to do anything we need to to protect our interests. I think the problem is right now for us to reenact Brooks-Murkowski, which is what, of course, we would have to do, at the time when the agreement has recently been reached is just not very good timing.

Senator MURKOWSKI. I don't understand your logic.

Mr. SELF. I don't share your view we lack the leverage.

Senator MURKOWSKI. If we don't have it on, you don't have the tool if you need it. Isn't that right?

Mr. SELF. No, sir. We have——

Senator MURKOWSKI. It expires in October.

Mr. SELF. Yes.

Senator MURKOWSKI. All right? Now, if we don't implement it with new legislation, then you're not going to have that tool; are you?

Mr. SELF. No. We have other tools.

Senator MURKOWSKI. Yes, but you've never used them.

Mr. SELF. That's correct, but that doesn't mean we won't use them in the future.

Senator MURKOWSKI. Well, I don't know. It's a pretty good track record. And as we say in Alaska, "If after 3 or 4 years, you haven't established your trap line, why, it's unlikely that you have one."

Ms. Smith, would you care to comment on the reality of the value of the tool of not naming any country but having it out there so you can use it if you need it?

Ms. SMITH. At the time that we signed the agreement, Senator, Secretary Verity made it very clear that your interest and involvement had been very helpful in bringing us to closure on the agreement. And I think that we all would really want to acknowledge that again in conjunction with this discussion.

I think that the distinction that you are making between an amendment which names Japan by name——

Senator MURKOWSKI. No, no, no.

Ms. SMITH. That's what I said. I think the distinction that you are making between an agreement that names Japan by name and one that just says any country is a very important distinction.

Senator MURKOWSKI. Well, it's the intent. And we did not name Japan until we had the direction from USTR of the violation. It is not the purpose of this Senator, nor do I believe it is Representative Brooks' in the renewal effort, to name any country, but to simply have it there as a tool. So, my question to you is, Would you support it as a tool without naming a country?

Ms. SMITH. Our major concern is, as you know, one of the letters that form an integral part of the agreement and which is a public part of the agreement makes it very clear that if restrictions on Japan continue into the next United States fiscal year, the provisions of the agreement are no longer in force. And that is the concern that we are expressing here about use of the measures against Japan at this time.

Senator MURKOWSKI. Nobody is talking about using them at this time. We are acknowledging that they expire in October. If we reinstitute them and not name a country, would you support that?

Ms. SMITH. Well, that particular question is a tool to be used by my colleagues in USTR, and I would defer to their response to that question.

Senator MURKOWSKI. Am I to assume that USTR is not interested in that as a tool without naming a country?

Mr. SELF. Without naming a country, it is not as difficult frankly. Let me——

Senator MURKOWSKI. Well, would you pursue——

Mr. SELF. Senator, could I make reference to a provision of the trade bill which I have to confess to you the specific provisions which I cannot cite? However, it does require, as I am told, the Trade Representative to, within a 12-month period, examine all public works contracts whether they be goods, services or of any kind. The kinds of procedures that we have been examining in the Kansai situation and which led to the Brooks-Murkowski amendment with our decision of putting Japan as the single country on the list, a similar process is required, has to be completed within the space of 12 months' time. Now, I would just make reference to that because it may be an adequate substitute for the sort of thing that you are looking for.

But I would say that the principal difficulty we would have——

Senator MURKOWSKI. You are talking about specifically the 302 investigation contained in the recently passed trade bill now. Is that right?

Mr. SELF. No, no, no.

Senator MURKOWSKI. You're not.

Mr. SELF. No, that's a separate one. That deals specifically with Japan.

But we're talking about any country, and it involves more than architecture or engineering and construction. It involves any project, goods or services, across the board.

Now, I'm sorry I can't give you a citation now. One was given to me but it was in the bill that the President vetoed, and so there is a different—but we can find that out for you.

To be more direct with your question, sir, I don't think that the inclusion of Japan in the understanding itself would make the bill as difficult.

Senator MURKOWSKI. I think that is a buy America under Brooks-Murkowski that will be set up in 18 to 24 months.

Mr. SELF. Yes.

Senator MURKOWSKI. What action do you intend to take in response to the mandated section 302 investigation contained in the recently addressed and passed trade bill?

Mr. SELF. Well, as you know, sir, it is a 90-day period. We will have until I think November 23 to complete the factfinding phase which is what 302 is. On that date we will make a decision whether to——

Senator MURKOWSKI. Whether you want to find violations or not. Is that right?

Mr. SELF. Well, that's correct. And we will take into account everything——

Senator MURKOWSKI. And if you find——

Mr. SELF. Sorry.

Senator MURKOWSKI. If you find violations, what are you going to do?

Mr. SELF. Then we would decide to launch a section 301 investigation.

Senator MURKOWSKI. So, that's the process.

Mr. SELF. That's correct, sir.

Senator MURKOWSKI. And the timeframe. And you know of no reason why that will have to be extended.

Mr. SELF. No. It will not be extended.

Senator MURKOWSKI. I would like, since I am sure the chairman will leave the record open, you to answer for the record the question of whether USTR would support a continuation of Brooks-Murkowski under the concept of no naming of country, but simply as a tool in recognition of whatever momentum has been generated as a consequence of it.

Mr. Chalpin and Mr. Prestowitz, do you have any comments to make on the necessity of continuing Brooks-Murkowski?

Mr. CHALPIN. Yes. The U.S. design and construction industry has been lobbying in support of extension of the Brooks-Murkowski legislation as you have introduced it this year.

Senator MURKOWSKI. Mr. Prestowitz?

Mr. PRESTOWITZ. Senator, I think I would support continuation of Brooks-Murkowski. I guess I have two thoughts on it.

One is we wouldn't consider in our negotiations with the Soviet Union over nuclear missiles or arms reduction unilateral disarmament. We are constantly talking about bargaining chips and the need to continue SDI research in order to have bargaining chips and so forth. And it seems to me that is a logical way to negotiate. And I don't know why we would adopt a different kind of negotiating posture on trade matters.

The second point I guess is that you are not going to get—I was in Japan just recently. And I can tell you what the attitude in Japan is toward the construction agreement. The attitude in Japan is that, "OK, we had to buy them off. The Americans can't compete and they're not going to get very much of this. But because of the political situation, we had to give them something." So, it is seen as a token. It is seen as a maneuver.

And largely it is seen as a political maneuver; that is, that the issue was not whether or not the construction market should be open. The issue was how do we handle the political problem of the construction issue. And the way to handle the political problem of the construction issue is to come up with some kind of a procedural agreement which we have come up with.

Now, the view from the other side of the Pacific is that now that we have this agreement, then there will be a period of time when the agreement will be implemented. And so, it will take time for American companies to get licenses, build offices, do joint ventures. And during that period of time then, the State Department and most of the Departments of the U.S. Government will, as you have seen here today, argue that the agreement is working. We have to wait and see if it is working and continue to observe it.

Now, during that period of time, the United States industry will get virtually no business and the Japanese companies will continue to do 4, 5, or 6 billion dollars' worth of business in the United States market. Ultimately the U.S. companies may get some business. They may even get 400 or 500 million dollars' worth of business. And if they do, then the United States Government will come to you and crow about the success of this agreement, but during that period of time, the Japanese companies will have gotten—I don't know—maybe $10 billion by that time in the United States market. So, that will be a pretty good deal, a pretty good negotiation from the Japanese side.

And I think that unless you have Brooks-Murkowski or some similar tool, some similar way to continue to bring oversight and pressure to bear, the process will unfold as I have said. And there will continue to be inequity and a growing imbalance in the trade, but at the same time you will be told that everything is working as anticipated.

Senator MURKOWSKI. Let me ask another question to the administration. Do you intend to remove construction from the next barriers to the trade report?

Mr. SELF. No.

Senator MURKOWSKI. This will be to Mr. Mark Chalpin. United States industry has been criticized by the administration for not doing more to enter the market in Japan. And recognizing this is a two-way street and some companies have told me, "I can beat my head against the wall standing in line over there and it's so futile, I might as well go make some money someplace else. It's not worth the effort." And the administration says, "Look, we're not getting a reasonable approach and interest from U.S. companies."

And you represent U.S. companies, Mr. Chalpin. I don't know the degree of objectivity, but give us the best you can.

Mr. CHALPIN. Are you referring to Secretary Verity's recent comments in Japan?

Senator MURKOWSKI. No. I'm referring to your own interpretation of the question of U.S. industry being criticized by the administration. And if you want to attribute it to Secretary Verity or anybody else, that's your own business, but, namely, about not doing more to enter the market in Japan.

Mr. CHALPIN. Well, I actually addressed that, of course, in my testimony. We are disappointed in what we feel is an embracing by the administration of the tiresome propaganda by the Japanese industry and Japanese Government that we are not trying hard enough. That seems to me implicit in that kind of a statement, a condonation of the protectionist barriers at the government, industry, and cultural levels that the Japanese use to keep their market closed.

As Mr. Prestowitz said earlier, the Japanese have plenty of representation in this town. They don't need any more help. We do.

Senator MURKOWSKI. Are you aware of any lobbying effort that takes place in Japan for United States firms? All of us are familiar with the aspects of lobbying and the practical realities and the value and services of it. Do we have a counter in the industry, architecture, engineering, design, construction, in Japan similar to——

Mr. CHALPIN. Senator, I believe that we do not have any lobbying effort in Japan such as the Japanese industry has in Washington.

Senator MURKOWSKI. Why not?

Mr. CHALPIN. As I understand—the government, of course, in Japan is much different. But lobbying is different I believe for two main reasons. One, Japanese politicians would not allow a lobbyist representing foreign interests into their front door; and two, people who might engage in lobbying would be afraid of being stigmatized if they were to represent a foreign interest before Japanese politicians.

Senator MURKOWSKI. Mr. Prestowitz, would you agree with that statement? You are a student of the process.

Mr. PRESTOWITZ. Yes, basically I do. I think that the nature of the Japanese Government makes it—it's a different kind of lobbying that goes on. Laws in Japan are not written by the Diet. They are written by the ministries, the bureaucrats.

And in order to lobby, you have to know what is happening. Lobbying happens here because when I came into this room, it was full of not only Americans, but foreign representatives. And they hear what we say, and they hear what you say, and they know what is going on, and they can lobby. This doesn't happen in Japan. So, it is very difficult——

Senator MURKOWSKI. Does it not happen because we don't want to participate——

Mr. PRESTOWITZ. No. It doesn't happen because the procedures aren't open in Japan. The laws and the hearings are held behind closed doors, and it is very difficult to know about them.

Senator MURKOWSKI. So, if some of Mr. Chalpin's companies wanted to go hire Japanese lobbyists to represent——

Mr. PRESTOWITZ. Well, there really aren't any Japanese lobbyists——

Senator MURKOWSKI. It wouldn't work.

Mr. PRESTOWITZ [continuing]. As we think about them, and it would be extremely—I mean, as you well know, the path from U.S. Government official to a lobbyist for foreign interests is well worn in Washington. This is virtually an unknown path in Japan.

Senator MURKOWSKI. Do you think that the ingenuity of some of the Washington, DC law firms would be such that they would look to that as a pasture of potential greenery.

Mr. PRESTOWITZ. Well, it doesn't work that way. In fact, we got this lawyers agreement with the Japanese and we've got more American lawyers in Tokyo. And it turns out that the American lawyers in Tokyo are basically working for Japanese clients lobbying the United States. It just doesn't seem to go the other way.

Senator MURKOWSKI. You might say that our friends have figured out our process.

Mr. CHALPIN. Well, they have. They have.

Senator MURKOWSKI. They're smarter than the average bear.

Last, in your opinion is limited progress due to the belief that the agreements won't really improve access in Japan in the long run? I mean, our agreements weren't negotiated out of a normal process, but they were agreements that resulted out of tension occurring over a rather symbolic identification of the Kansai project which people in the United States could understand the inequity in light of the fact that American firms do have capabilities in architectural engineering, design, moving people, and feeding people.

So, we have an expertise in the area and we haven't been able to break into the area. So, this symbolism occurred, and Brooks-Murkowski took place. And now we are left with the reality of where to go from here. I guess while the administration has an objectivity that they must maintain, the suggestion by the private sector of Mr. Chalpin and Mr. Prestowitz is that while it looks fairly good in the window dressing sense, we really haven't accomplished much of a concrete nature and a reasonable defense is that the agreement

hasn't been in place very long. But the question is whether we take down some of our basic weapons. I am not going to ask that question.

I just want to conclude, Mr. Chairman, by thanking you for your patience. You have sat a long time this afternoon, presiding over an issue that is of great interest to all of us, and we look forward to the solidification of the administration's recognition that there is going to be a new review when we come back. But I think it is fair to at least enunciate to those in the audience that have been following this that it is a growing concern.

And I want everybody to understand that this is not a Japanese-bashing mission. I have nothing but the highest regard and the utmost respect for the process under which the Japanese since reconstruction have obtained and extraordinary capability in the world today. And I think we can learn a lot from that.

My basis is one of a business principle recognizing the leverage that we have as the largest market in the world, consumer market, and Japan must have continued access. And I think the Japanese understand that the reality of using that leverage to mandate access into their markets is a business principle and a solid reality. I have always received the utmost cooperation from the Japanese Ambassador and his staff from former Prime Minister Nakasone, current Prime Minister Takeshita, and I have nothing but the highest regard. But I happen to believe that charity begins at home as well. And that is the purpose of going into these matters and this detail.

And again, I want to thank you, Mr. Chairman, for allowing this extended time and the witnesses as well.

Senator SANFORD. I thank you for your leadership in this over the number of years and your continuing leadership. I thank all of you for coming.

We will keep the record open for additional comments, and you will perhaps receive additional inquiries which we would appreciate your replying to. And we look forward to seeing you shortly after the first of the year.

We stand adjourned.

[Whereupon, at 4:50 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

# APPENDIX

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### Prepared Statement of Senator Murkowski

I am pleased that the committee will have the opportunity to review the progress we have made on several issues relating to our services trade relationship with Japan. This is the fourth hearing held on United States-Japan services trade over the last 3 years.

Our interest in the issue of United States-Japan services trade has been sparked by changes in the United States competitive position in services trade. In 1982, the United States had an overall surplus in services trade of $36.8 billion. By the end of 1987, that surplus had dwindled to $12 billion. By the end of this year, we are expected to have a deficit in services trade of $8 billion. This is a source of tremendous concern as the U.S. service sector accounts for 75 percent of our employment.

One of the countries with whom we have seen a marked turnaround in our balance of trade in services is Japan. In 1984, for the first time we had a deficit in services trade with Japan of $676 million. Over the past 4 years that deficit has continued to grow.

While this turnaround can be traced in part to increases in Japanese investment in the United States, concerns have been raised that the deficit can also be attributed to barriers to United States firms' participation in various service industries in Japan.

In 1986, we heard testimony regarding serious barriers to United States participation in Japan's construction and transportation sectors. We learned that despite the international competitiveness of the United States construction industry, our international firms were doing no construction business in Japan. At the same time, Japanese firms were engaging in over 2.2 billion dollars' worth of work in the United States. We also learned that the nontransparent, closed nature of Japan's bidding system effectively ensured that foreign firms would have little chance of penetrating that market.

After over 2 years of unsuccessful negotiations, in December 1987, Congress enacted sanctions which prohibited Japanese construction firms from participating in any federally funded public projects. These sanctions were successful in bringing Japan to the negotiating table to propose significant changes in the bidding system that would allow United States firms fair access to bid on major projects in Japan. Today we will hear testimony from industry and administration officials on the initial impact of that agreement and its chances for resulting in a true market opening.

In addition, we will hear what progress has been made to expand opportunities for United States cargo and passenger carriers in Japan. In the past, this committee has expressed concern over the inability of United States firms to fully utilize rights granted to our carriers in our aviation agreements with Japan, while Japanese carriers appear to be taking full advantage of the rights granted them in our bilaterals.

I want to thank the chairman for his willingness to hold this hearing and I look forward to the testimony which will be presented.

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[New York Times, Mar. 4, 1988]

### Did Japanese Lobbyists Scuttle Top Appointment?

(by Martin Tolchin)

Washington, March3—Have lobbyists for the Japanese construction industry killed the promotion of a tough negotiator who was up for a top post in the Commerce Department?

"That's what people are saying, and I haven't heard a rebuttal to it," Senator Frank H. Murkowski, Republican of Alaska, said in an interview Wednesday night after discussing the matter with Commerce Secretary C. William Verity, Jr.

After Mr. Murkowski's comments were relayed to a senior White House official, the official called the Senator to deny the accusation.

Mr. Murkowski, who has focused on international trade as a member of the Senate Foreign Relations Committee, called a reporter today to say, "There are rumors all over that this thing was done out of the White House, but the White House just told me there's nothing to it."

"SOMETHING VERY WRONG"

The issue concerns the status of J. Michael Farren, who was considered a leading candidate for the post of Under Secretary for International Trade. The 35-year-old Deputy Under Secretary for International Trade, is the lead negotiator in efforts to enable American companies to bid for contracts on the construction of Konsai airport in Japan.

Senator Murkowski said, "If we have a system in which the Japanese lobbyists dictate who's going to be the trade negotiator, there's something very wrong with the system."

Noting Mr. Farren's leading role in the construction talks with Japan, the Senator added, "It's not psychologically a very good time for us to be changing horses in the middle of the stream."

Clayton K. Yeutter, the United States Trade Representative, was also disturbed by reports that Japanese lobbyists had persuaded the White House to circumvent Mr. Verity. "Mr. Yeutter's concern is that the Konsai negotiations be skillfully handled in Mr. Farren's absence," said Roger Bolton, a spokesman for the Trade Representative.

Reports of the intervention of Japanes lobbyists were received not only on Capitol Hill, but also by lobbyists for the American construction industry.

"We're concerned about reports that the appointment process is being influenced by the Japanese construction industry," said Mark G. Chalpin, vice president of the National Constructors Association.

Some congressional aides said that Mr. Farren's tough negotiating stance had made him anathema to the Japanese lobbyists, who then circumvented Mr. Verity by going directly to the White House to kill his promotion.

The aides noted that the leading lobbyist for the Japanese, William H. Morris, was an old friend of Howard H. Baker, Jr., the White House chief of staff, who is in Brussels at a summit meeting of the North Atlantic Treaty Organization. Mr. Baker did not return telephone calls over a period of 2 days concerning the Commerce Department appointment.

LOBBYIST DENIES ALLEGATION

The lobbyist is also an acquaintance of Ken Duberstein, the White House deputy chief of staff, who initially declined to comment. Mr. Duberstein lifted his silence today to say only that "The President acted on the recommendation of Secretary Verity." Had Mr. Verity's arm been twisted? Mr. Duberstein had no further comment.

Mr. Morris, president of Global U.S.A., which represents the Japanese construction industry, denied that he had intervened to oppose Mr. Farren's promotion. "I don't think that Mike Farren is any tougher than anyone else," Mr. Morris said. "In my company, we have to work with whoever is there."

"I haven't talked to Howard Baker of Ken Duberstein in 3 months," he added.

The nature of Washington lobbying is such that it is often difficult, if not impossible, to assess a lobbyist's influence, especially when some of the principals decline to talk. Who knows the impact of a casual conversation at a Washington cocktail party, or a seeming afterthought in a telephone conversation between old friends?

In this case, Mr. Verity, the man at the center of the issue, on Wednesday flatly refused to discuss the Farren case, according to a press spokesman. He still refused to discuss the case today, but issued a statement through his spokesman, who said that Mr. Verity was too busy helping Members of Congress tour the Commerce Department on its 75th anniversary to discuss his role in the Farren case. Mr. Farren also declined to comment.

In his written statement, Mr. Verity, who has not announced his choice for the post, said: "The decision not to propose Michael Farren for the job of Under Secretary for International Trade was entirely mine. I have a very high regard for Mr. Farren, but I felt that another candidate was better qualified for that job. The idea that his nomination for that job was blocked by lobbyists for Japan is ludicrous. In fact, I have offered Mr. Farren the job of Special Assistant to me to deal specifically with the question of our relations with Japan."

Mr. Farren has been the Commerce Department's institutional memory on the construction issue. Mr. Farren joined the Department in 1983, and served as counselor to the Secretary and head of the Office of Business Liaison before taking his present post.

Mr. Farren played a leading role last week when an administration advisory body voted unanimously to recommend that President Reagan initiate a trade retaliation

case against Japan because of deadlocked negotiations on opening its construction market to foreign companies.

The action by the Trade Policy Review Group added acrimony to one of the most contentious Japanese-American trade disputes and could lead to broad sanctions that could affect the economic and political relationship of the United States and Japan.

The retaliation being considered is similar to that already in place against Japan in a dispute last year over semiconductors. The United States still has sanctions against 165 billion dollars' worth of Japanese electronics products, following accusations that Tokyo failed to provide access to the Japanese market.

PREPARED STATEMENT OF GREGORY S. DOLE

Mr. Chairman, members of the subcommittee, it is a pleasure to be here this morning to bring you up to date on developments in our aviation relationship with Japan.

The U.S.-Japan air transportation market is one of this country's largest and most important international markets. Japan is the United States' leading aviation market in revenue passenger miles, passenger revenues, freight tons, freight ton miles, freight revenues and total revenues.

As to number of passengers, Japan ranks fourth behind only Canada, the United Kingdom and Mexico. During the 1977-87 period, the U.S.-Japan air passenger market grew almost 150 percent for an average annual increase of 9.6 percent. In calendar year 1987, six million passengers flew in the U.S.-Japan market. In the first five months of this year, compared with the same period in 1987, the U.S.-Japan passenger market increased almost 30 percent. This relative increase far surpassed that of other leading markets.

Also worth noting, Mr. Chairman, during the first five months of 1988, U.S.-flag airlines carried 52 percent of the total passenger traffic between the U.S. and Japan; only 27 percent were U.S. citizens. A year ago, during the same 5-month period, 46

percent of the total passenger traffic traveled on U.S. airlines; 29 percent were U.S. citizens. As you can see, U.S.-flag airlines are carrying more than 50% of the passengers between our two countries and less than one-third of those passengers are U.S. citizens.

On the cargo side of the equation, during the nine-year interval 1978-1987, U.S.-Japan air freight tonnage rose 111 percent for an average annual increase of 8.7 percent. For calendar year 1987, U.S.-Japan air freight tonnage exceeded 300,000 tons. During the first half of 1988, U.S.-Japan air freight increased almost 44 percent compared to the same period last year. Our U.S.-flag share during this period was almost 47 percent compared to 42 percent during the same period a year ago.

Clearly, this is a vital transportation market, one deserving careful attention. As you know, our two nations -- Japan and the United States -- have struggled through some difficult aviation negotiations the past few years. I would like to spend a few minutes reviewing our policy objectives and then look at the application of this policy in the context of our aviation relationship with Japan.

Our aviation relationship with Japan involves two principal types of issues. First, there are "doing business" issues which arise from the implementation of existing air service agreements between the countries. Second, there are issues dealing with changing the existing air transportation regime. Both types of issues are important and require our careful consideration.

One of our principal aviation goals is to promote additional opportunities for airlines and greater price and service options for passengers and shippers. We believe that the most effective way to achieve this objective is to limit government intervention, where possible, in airline affairs and encourage free and open competition among airlines.

For these reasons, the Department of Transportation was an early and strong supporter of aviation deregulation in the United States. The enormous benefits we enjoy under domestic deregulation encouraged us to pursue similar reforms in foreign air transportation. We believed that the application of market-oriented transportation policies to international aviation markets would enhance the general welfare of this country as a whole, significantly improve air transportation for passengers and shippers, and foster more productive international relationships.

It is in this context that the United States entered into a number of relatively "liberal" aviation agreements with foreign governments in the late 1970s and early 1980s. Some of these early agreements offered foreign airlines increased access to our markets without sufficient regard to a rigorous accounting of the balance of benefits to be derived from the agreements. We were willing to take this bold step in the expectation of attaining a truly open, competitive international market place and to encourage other countries to follow our example.

Most countries, however, were unwilling to let their flag carriers compete in a totally unfettered economic environment. Rather than embrace our approach, various nations restricted United States carrier operations. We also found that United States carriers were often forced to compete on an unlevel playing field. What United States carriers discovered was that their own U.S. gateways were more competitive than ever, but foreign destinations weren't open to competitive opportunities. Even in those cases where we were able to negotiate relatively liberal bilateral regimes, the benefits received in exchange were sometimes offset by foreign government restrictions that curtailed newly won opportunities.

These considerations required a reexamination of our approach and, ultimately, the adoption and implementation of much tougher and more pragmatic negotiating and regulatory tactics. Our civil aviation policies focus today on obtaining a concrete balance of benefits and maintaining those benefits through rigorous enforcement of United States carrier rights under existing agreements. No country should expect to introduce new services to the United States unless it is willing to grant opportunities of equivalent value for United States airlines.

We do not offer foreign airlines new or additional access to our markets unless we are satisfied that their marketplace structures are fair and nondiscriminatory. The U.S. also insists

on the elimination of unfair or restrictive practices or requirements which impede the ability of U.S. airlines to provide efficient and truly competitive operations.

In short, we seek to ensure that our carriers get a fair and equal opportunity to compete in foreign markets. It should be clear that there is strong linkage between protecting U.S. carrier rights under existing agreements and providing U.S. carriers with a fair and equal opportunity to compete in foreign markets.

Mr. Chairman, when foreign governments withold or restrict opportunities that should be available to U.S. carriers under previously negotiated bilateral agreements, we must stiffen our resolve. If we do not safeguard rights that we have previously negotiated, we may be forced to pay for these same rights time and time again. Repayment significantly undermines our ability to eliminate unwarranted restrictions on U.S. carrier operations and to achieve a meaningful balance of aviation benefits with our trading partners.

We will not grant foreign airlines additional rights unless we are provided reasonable assurance that our airlines will be permitted to freely exercise rights delineated in existing agreements.

Our aviation policy is built on a determination to provide U.S. carriers with level playing fields and equitable marketplace structures. These considerations also reflect fundamental statutory requirements, including our obligations under the Federal Aviation Act to strengthen the competitive position of U.S. air carriers in international markets; to eliminate operational and marketing restrictions to the greatest extent possible; and to obtain aviation agreements which provide for a balanced exchange of opportunities.

Mr. Chairman, I would like to return my focus to Japan, which provides a graphic example of how we have applied our current policies to an important aviation relationship. As I previously noted, recent developments in that relationship center on doing business problems under existing agreements and our efforts to seek new and expanded opportunities for U.S. carriers in this this market.

As to the doing business problems, it is significant that over the last several years our airlines have experienced numerous difficulties in attempting to operate in Japan. Some of these problems involve the imposition of burdensome and costly restrictions by Japanese authorities. Others involve the denial of rights which our carriers are now entitled to exercise.

The United States has insisted on the elimination of these doing business problems. It has made a concerted effort to resolve each and every one of them when they occur, and has devoted considerable resources to this endeavor. Our initial approach has been to handle these matters through diplomatic efforts. Accordingly, we have rapidly fielded negotiating teams which attempted to eliminate the basis for our concerns through direct contact with Japanese authorities. Failing satisfactory resolution through these channels, we have used regulatory measures to encourage necessary reforms. In pursuing this course of action we have repeatedly emphasized that we will not make concessions that amount to payment for rights we now hold, and that we are prepared to impose economic sanctions to protect and enforce those rights.

I am pleased to report that this approach has helped us resolve some doing business problems involving the imposition of burdensome Japanese administrative requirements. For example, in response to our concerns, Japanese authorities have significantly reduced or eliminated previously imposed restrictions and requirements affecting customs inspections at Tokyo's Narita Airport, the availability of prime-time slots for U.S. carriers at that airport, and documents required for U.S. charter operations.

More recently, we have been successful in eliminating burdensome administrative requirements which impeded Federal Express' ability to provide effective small package service to Japan. Prior to the introduction of Federal Express into the Japanese market earlier this year, the Japanese complained that Federal Express' proposed operations would not fully comply with the small package provisions of the 1985 Memorandum of Understanding. They questioned whether the type of air waybill used by Federal Express would meet the requirement in the MOU that each package have its own individual air waybill.

Both the Departments of State and Transportation made representations in strong support of Federal Express' ability to use its own air waybill system which is uniquely tailored to Federal Express' way of operating. The Department of Transportation issued orders extending the start-up date for Federal Express' small package service to Japan while this issue was being addressed. The Department found that Federal Express' air waybill system fully complied with the individual air waybill requirement in the 1985 MOU and that it was unreasonable for the Japanese authorities to deny Federal Express the ability to use that system in providing small package service to Japan.

We have firmly maintained that the Federal Express operations are consistent with the MOU and, as a result of the position that we have taken, I believe that we have successfully defended Federal Express' ability to continue to operate using its present procedures.

We have also made some progress in resolving other doing business problems concerning Japan. Work, however, remains to be done in these areas. In particular, Japan has refused to allow Flying Tigers to provide Tokyo-Europe service via Anchorage. It has also impeded U.S. carriers' efforts to provide ground handling services for other carriers. And United Air Lines continues to face significant obstacles to its ability to effectively market its computer reservation system in Japan.

I would like to briefly report on the status of these important issues. As provided for under the existing agreement, Flying Tiger filed schedules earlier this year to operate three round trips per week between Tokyo and Anchorage. The plane was to continue on to Europe with a different flight number. On July 6, Japan granted Flying Tiger a 60-day permit to operate the Tokyo-Anchorage service. However, it conditioned the authority to prohibit Flying Tiger from carrying no more than 50% third country traffic and to require Flying Tiger to file monthly reports. On July 13, Flying Tiger filed a complaint with the Department against the Japanese government alleging that Japan was depriving it of operating rights to which it is entitled.

The Department fully supports Flying Tiger's interest in providing Tokyo-Europe service and has employed intensive diplomatic and regulatory efforts to achieve this objective. Through diplomatic efforts, we have insisted that the Government of Japan approve the carrier's schedules without the imposition of sixth freedom traffic requirements. After those efforts did

not produce a satisfactory resolution of the problem, on September 8, the Department issued an order approving Flying Tiger's complaint. The Department concluded that the Japanese Government's unilateral imposition of a limitation on a U.S. carrier's sixth freedom operations involving Japan is discriminatory and a violation of the U.S.-Japan Air Transport Services Agreement. The Department's order deferred a decision on appropriate sanctions on this complaint, however, in the hope that further talks with the Japanese could secure their compliance.

At the talks which were held from September 19-22, the Japanese offered to allow Flying Tiger to operate the three flights per week for six months provided that traffic data on the service be provided after 90 days and that we approve intermodal trucking rights for cargo services of Japanese carriers. We are studying the proposal in consultation with our industry.

The second doing business issue involves Flying Tiger's difficulties in obtaining additional warehouse space or land on which to construct facilities at Tokyo's Narita Airport. As a result, on July 22, Flying Tiger requested that the Department refuse to renew the authorization of one of Nippon Cargo Airlines' three additional U.S.-Japan all-cargo frequencies after its expiration on August 10. The Department granted Nippon Cargo a limited extension of its authority while we seek to resolve Flying Tigers' problem.

We discussed this problem with the Japanese during talks both in July and last week. The Japanese maintain that U.S. carriers

have the right to perform their own handling and the handling of other carriers within their existing facilities. However, Japan asserts that it is not obligated to make available additional space or facilities to perform these services. Furthermore, Japan notes that additional space is not available at Narita Airport. A study group has been established to examine the space problem at Narita. We believe Flying Tigers is participating in this study group.

We are carefully monitoring the study group. If satisfactory progress is not made towards an acceptable resolution of this problem, we are prepared to take appropriate action.

The third doing business problem involves United Air Lines' difficulties in marketing its APOLLO Computer Reservation System in Japan. Japan Air Lines (JAL) refuses to enter into a ticketing agreement with United that would allow APOLLO to issue Japan Air Lines tickets. Given the dominance of Japan Air Lines in the Japanese market, it is extremely difficult for United to market its APOLLO system in Japan if it cannot write tickets on JAL.

Consistent with our strong interest in resolving doing business problems as quickly as possible, we have actively attempted to remove the restrictions that have been placed on the effective operation of APOLLO in Japan. This issue was discussed at length during the U.S.-Japan talks in July, was the subject of intercarrier discussions in early September, and was discussed again in our most recent aviation discussions with Japan.

The first two sets of talks did not produce the results that we had hoped for. In these circumstances, we issued an order on September 16 which approved United's complaint against JAL, finding that JAL's actions established an unreasonable and unjustifiable restriction of United's bilateral rights. We deferred a decision on the imposition of appropriate retaliatory countermeasures in order to enable us to reassess the situation in light of recent developments. We understand that the two carriers are continuing their talks on this issue.

We hope that the carriers can reach a mutually acceptable solution to this problem. Of course, the requirements of any agreement that the carriers reach must comport with the Department's rules, in particular our CRS rules, and we will carefully review any such agreement in this regard.

As for the issue of changing the air transportation regime between the two countries which has been in existence since 1952 but amended and modified over the years, several negotiating sessions have taken place over the last eight years aimed at a comprehensive revision of the basic agreement. Little progress has been made on this front because there are substantial differences between the Japanese approach and our approach. In general, we have sought an unrestricted operating environment, whereas Japan has sought a highly restricted regime in which capacity, designations, pricing and routes would all be closely regulated by the governments.

As noted earlier, our objective is to obtain a balanced exchange of opportunities. We are also seeking to remove restrictions limiting the operations of carriers to provide for a more competitive environment.

At the talks held last week, we presented a rather expansive proposal that would permit a substantial increase in U.S. carrier services to and beyond Japan and comparable benefits for Japanese carriers' service to the U.S.

The Japanese showed little interest in the latest U.S. offer. However, they did provide a lengthy list of opportunities that they would like. We are reviewing their presentation to assess the prospects for moving ahead with the negotiations.

This concludes my prepared testimony, Mr. Chairman. I would be pleased to respond to any questions which you and the subcommittee may have.

**PREPARED STATEMENT OF CHARLES ANGEVINE**

Mr. Chairman,

On behalf of the Department of State, I wish to express my appreciation for this opportunity to discuss with you the current status of the bilateral aviation relationship between the U.S. and Japan.

Ambassador Mansfield, former Senate Majority leader and current U.S. Ambassador to Japan describes the U.S.-Japan relationship as "...the most important bilateral relationship in the world, bar none." The relationship is vital to U.S. security interests in the Pacific and to U.S. hopes for future economic growth. Indeed, the dynamism of the Pacific basin, a modern economic miracle, flows directly from the U.S.-Japan relationship.

The importance of Japan to U.S. aviation interests is similarly clear and compelling. Japan is the leading bilateral aviation partner of the U.S. About six million passengers will fly between Japan and the U.S. this year. Traffic levels through April were up 30 percent. Cargo revenues were up 50 percent for the 12 month period ending in April. Total revenues are now running at about $6 billion annually and are divided evenly between the carriers of the two countries.

Japan's importance to U.S. aviation interests cannot be measured exclusively in bilateral terms. Japan serves as a hub for operations by U.S. carriers throughout Asia. The rapid growth in traffic between the U.S. and Korea, China, Taipei, Hong Kong, Thailand and other parts of the Pacific Basin is facilitated to a significant degree by U.S. carriers' hubbing activities in Japan.

The benefits of the bilateral aviation relationship with Japan extend beyond U.S. airlines. Japanese tourists spent $2.1 billion on goods and services in the U.S. in 1987, and Japanese citizens make up more than 70 percent of the travellers between the U.S. and Japan. In Hawaii, Guam, and Saipan, Japanese tourism makes the difference between prosperity and depression.

Despite its many benefits and continuing growth, the U.S.-Japan aviation relationship is marred by friction and missed opportunities. The basic framework for the relationship is restrictive. The number of U.S. airlines able to operate to Japan is limited, the amount of service is restricted, fares are regulated, cargo operations hamstrung by unavailability of space and cumbersome procedures, and charter operations are

under tight quotas. As a result, U.S. airlines are denied opportunities, travellers and shippers denied the benefits of additional competitive service, and the U.S. travel industry denied additional growth.

The restricted framework for air service between Japan and the U.S. has troubled the relationship for many years. It stems principally from Japanese fears that in a more open environment, U.S.airlines would gain a disproportionate share of the benefits from the relationship. With the evident growing strength of Japan's airlines and the decision by Japan to permit additional airlines to enter the U.S. market, limited progress in expanding the framework for air service has been achieved.

-- In 1985 agreement was reached on new services for both sides, opening the door to Federal Express's small package service, and new services by American from Dallas and Delta from Portland.

-- In 1982, we obtained the rights to offer Seattle-Portland service.

-- In 1980, we obtained additional rights for Continental/Air Micronesia to serve from Guam and Saipan.

Last week in Tokyo, a U.S. delegation chaired by Jeffrey N. Shane, Deputy Assistant Secretary for Transportation Affairs in the Department of State, proposed to Japanese authorities comprehensive revision of the bilateral aviation relationship. The U.S. proposal called for:

-- Expansion in route rights and beyond points sufficient to cover anticipated demand for new services for the next 10 to 15 years.

-- Additional designations for combination and all-cargo service.

-- Expansion of the charter quota.

-- Relaxation of pricing restrictions.

The U.S. proposal, if accepted by Japan, would have created a relationship vastly more suited to the needs of travellers and shippers, would have eliminated many of the sources of friction between the U.S. and Japan on aviation issues, and would have given significant new commercial opportunities to the airlines of both countries.

The initial Japanese response to our proposal was not encouraging. Although Japanese authorities have long sought to revise the bilateral aviation relationship, their approach has been and continues to be more restrictive than we believe appropriate for the world's two leading economic powers. We think it possible to devise a more open framework which will protect the interests of airlines in both countries. We believe that our proposal deserves greater consideration from Japan than it has yet received and look forward to a response from Japan more consistent with Japan's present economic position and responsibilities.

Our delegation also discussed with the Japanese a number of current problems in the aviation relationship. Notable among these was the proposal by Flying Tigers for service from Japan to Anchorage and beyond to Europe. The Japanese were extremely troubled by this proposal, expressing the view that it would be inconsistent with provisions in the bilateral aviation agreement calling for primary emphasis on service between Japan and the U.S. In authorizing the service, Japan required that at least 50 percent of the cargo on Tokyo-Anchorage flights be destined for the U.S. and asked Tigers to provide information on the composition of the flights.

The U.S. objected to Japan's imposition of prior conditions on the FTL service, arguing that Japan should have permitted the service and pursued though consultations its concerns regarding the consistency of the service with the provisions of the bilateral agreement.

However, at the Tokyo meeting, Japan recognized the need to resolve the FTL Tokyo-Anchorage-Europe problem. They offered a concrete proposal to enable the three flights requested by FTL. The U.S. now has that proposal under consideration.

A second current problem discussed in Tokyo was United Airlines' concern with the refusal of Japanese Airlines to permit ticketing on the COVIA computer reservation system which is 50 percent owned by United. In its complaint to the Department of Transportation, United said that JAL's refusal to permit ticketing on COVIA impaired the commercial feasibility of COVIA which in turn threatened United's ability to market its services in Japan effectively.

In its reply JAL aid that United was successfully marketing its service in Japan and that COVIA did not offer benefits to JAL equivalent to its cost.

We do not believe any national carrier should have the power to foreclose a new entrant in the CRS market from the opportunity to compete effectively. In the further talks now scheduled between United and JAL, we hope solutions will be found which permit COVIA to operate in Japan.

While we believe that the FTL problem and the United CRS problem are resolvable, we do not wish to underestimate the difficulties which must be overcome. Our patience will be tested, and our understanding will be stretched. But the bilateral negotiating process has produced significant results, and is an effective tool for resolving differences between sovereign governments. In the further negotiations we anticipate with Japan, we will be working with interested airlines and other parties to broaden the framework of the U.S.-Japan aviation relationship and to solve current problems as they arise.

Thank you.

**PREPARED STATEMENT OF MARK G. CHALPIN**

Mark G. Chalpin
Vice President, Government & International Affairs
National Constructors Association

On Behalf of the
International Engineering & Construction Industries Council

Statement for the Record
Subcommittee on International Economic Policy, Trade, oceans & Environment
Committee on Foreign Relations
United States Senate

September 28, 1988

Mr. Chairman and Members of the Subcommittee:

I am Mark Chalpin, Vice President of Government & International Affairs for the National Constructors Association. I am here today in my capacity as spokesman for the International Engineering & Construction Industries Council (IECIC) on the subject of reciprocal trade of design and construction services with Japan.

IECIC is an umbrella organization comprised of: the American Consulting Engineers Council, the American Institute

of Architects, the Associated General Contractors of America, and the National Constructors Association. IECIC represents almost four million employees in the U.S. architectural/engineering/construction industry.
Our industry established IECIC in 1967 in recognition of serious probelems that were causing the erosion of the U.S. competitive position in design and construction markets overseas.

The importance of the U.S. design and construction industry to the U.S. economy and to jobs for Americans should not be underestimated. The U.S. design and construction industry builds the nation's public works infrastructure, homes, factories, and offices. The U.S. construction market is $400 billion per annum and constitutes approximately 8.5% of the nation's GNP. In 1987, 54% of public and private investment in this country was in construction projects. The U.S. construction industry employs approximately 6.2 million Americans. In addition, 13 of the 20 major U.S. manufacturing industries are suppliers to the U.S. construction industry, including: steel, wood products, cement, construction equipment, appliances, and heating and air conditioning systems.

In the international market, U.S. contractors are the world's leading exporters of construction services with $18.1

billion worth of new contracts in 1987 by the top 40 U.S. international contractors according to Engineering News Record (ENR). U.S. international design firms are also the top exporters globally, with the top 60 U.S. firms being awarded more than $1 billion worth of new contracts in 1987 according to ENR. Furthermore, according to a study performed by Price Waterhouse, every $1 billion of direct revenues produced by U.S. design and construction exports generates $1.27 billion of indirect revenues from associated sales of goods and services and employment. In addition, every $1 billion in total U.S. revenues generated by U.S. design and construction exports results in approximately 24,000 jobs for Americans.

Reciprocal trade of design and construction services between the U.S. and Japan has become an especially contentious issue since early 1986 when Senator Frank Murkowski and the Department of Commerce brought to the public's attention the lack of access for U.S. design and construction firms to the $8 billion Kansai International Airport project in Osaka harbor. The significance of access to Kansai was underscored by the lack of experience of Japanese contractors in airport construction compared to the state-of-the-art technology and considerable experience of U.S. design and construction firms.

The imbalance in trade of design and construction services between the U.S. and Japan has steadily grown during this decade. According to ENR, which tracks the amount of work by foreign contractors in the U.S., Japanese contractors rapidly increased their work in the U.S. from $50 million in 1982 to $1.8 billion in 1985. Their workload increased to $2.0 billion in 1986 and to $2.2 billion in 1987. At least two thirds of their work is on Japanese-owned investment projects as opposed to U.S. public works or U.S. privately owned projects. In view of the rapid increase in Japanese investment in this country, we are concerned that significant work by Japanese contractors on Japanese-owned investment projects is going undetected.

U.S. design and construction firms are encountering increasing difficulty in competing on Japanese-owned investment projects in the United States. Several years ago, U.S. design and construction firms could routinely submit bids in English and win a reasonable share of contracts on these projects. Now, they believe that they must submit bids in Japanese because the decision makers are in Japan, and they are winning a smaller and smaller share of such contracts. U.S. firms are losing contracts in this country in some instances to Japanese contractors with less technology and experience on the projects involved. Based on the extreme difficulty that U.S. design and construction

firms now face in competing for work on Japanese-owned investment projects in this country, IECIC estimates that Japanese contractors now perform an overwhelming percentage of the construction work on those projects. This leads IECIC to believe that the Japanese owners and contractors have transported the non-competitive procedures and protectionist barriers that they use in Japan to their investments in this country. Moreover, U.S. design and construction firms are often dealing with the same Japanese owners in Japan with whom they are having such little success in the U.S.

In the Japanese market, U.S. contractors have not been awarded a major construction contract since 1965. In fact, in 1986, U.S. contractors built a total of one Mrs. Fields cookie stand in Japan. Japan has the world's second largest construction market after the U.S., yet international contractors from the U.S., Western Europe, and Korea have been unable to penetrate the Japanese market. Japanese bureaucrats and the Japanese construction industry keep saying that U.S. design and construction firms are not trying hard enough to enter the Japanese market, that they must learn the language, culture, business practices, and laws. This claim has three fundamental flaws. One, while the Japanese like to paint the construction trade issue as a bilateral problem between the U.S. and Japan, Korean and Western European contractors are having no more success than

are U.S. contractors in working in Japan. Two, whatever the knowledge of U.S. contractors of the Japanese system, the Koreans certainly have learned from close contact over centuries how Japan functions and are still unable to build in Japan. Three, when the top exporters throughout the world of construction services are not working in the world's second largest construction market, the focus should be on that market rather than the exporters.

To further illustrate the difficulty U.S. contractors have encountered in working in Japan, it should be noted that U.S. contractors have been associating with Japanese contractors for up to twenty years. Yet, until recently, those cooperative efforts have universally involved projects in third markets and the U.S. Japanese contractors have been more than willing to discuss projects outside of Japan but have fallen strangely silent on projects in Japan. In the past year, there have been several cooperative arrangements between U.S. and Japanese contractors concerning work in Japan. It is still premature to judge the success of those arrangements.

As for the status of trade of design and construction services between the U.S. and Japan since May 25 when the arrangement was announced, we cannot report favorably. As of May 1, 26 U.S. firms with a design and/or construction

capacity had registered for the Kansai project. There certainly has been much activity on the part of Japanese owners of projects covered by the arrangement in terms of interaction with U.S. firms. The Japanese and U.S. press have dutifully reported applications for construction licenses by foreign contractors and bids by foreign firms. IECIC remains optimistic that U.S. firms will be awarded contracts on the specified fourteen projects. However, IECIC has yet to see any results in the way of contracts. More ominously, IECIC has seen no change in the attitude and behavior of Japanese owners that would indicate a genuine intention to open the Japanese design and construction market.

The Japanese government and construction industry are claiming that the U.S. design and construction industry is not trying hard enough to take advantage of the opportunities available pursuant to the arrangement. IECIC thinks that the fact that at least 26 U.S. firms have registered for the Kansai project indicates a serious intention to test the intention of the Japanese to honor their commitment to open their market. However, there is going to be a limit to the number of U.S. firms willing to invest the large amount of capital required to operate in Japan and pursue purported opportunities as long as the Japanese do not demonstrate by their attitudes and actions as evidenced by marketplace

results that U.S. firms are welcome to compete on an equal basis with their Japanese counterparts.

Mr. Chairman, in conclusion, IECIC believes that the trade imbalance in our industry with Japan is growing worse due to the Japanese unwillingness to allow U.S. design and construction firms to compete on an equal basis with Japanese contractors in Japan and predatory trade practices by the Japanese in this country. IECIC appreciates the pressure that the Congress has brought to bear on Japan to open its construction market to U.S. design and construction firms. IECIC urges the Congress to continue to pressure Japan to open its market by sending a clear and constant message that the U.S. will not tolerate the current grievous imbalance. On behalf of IECIC, I wish to thank the Subcommittee for this opportunity to testify. I will be pleased to answer your questions.

PREPARED STATEMENT OF A. DOYLE CLOUD, JR.

Mr. Chairman, Members of the Subcommittee:

I am A. Doyle Cloud, Jr., Vice President of Regulatory and Government Affairs for Federal Express Corporation. I appreciate this Subcommittee's continuing interest in matters of trade between the U.S. and Japan, and I am pleased to appear before you and offer the views of Federal Express on a subject of great economic concern -- the U.S.-Japan bilateral exchange of air cargo transportation services.

Representatives of both governments met last week in Tokyo to discuss various aspects of the U.S.-Japan aviation bilateral regime. Not surprisingly, these negotiations failed to provide a concrete foundation for meaningful change, as the Japanese government continues to resist the establishment of a balanced, open bilateral relationship. Because of this Japanese intransigence, neither the U.S. nor its air cargo carriers have been able to fully and fairly exploit the economic opportunities enjoyed by our foreign counterparts.

Consequently, U.S. air cargo carriers are losing market share at an alarming rate.

According to the April, 1988 Analysis of the United States International Air Cargo Market prepared by the Departments of Transportation and State, "U.S. flag share [of the Asian/Pacific market] has decreased from 49.7% in 1975 to 41.2% in 1986," and U.S. flag share of the U.S.-Japan market has dropped from 48.3% to 43.5%. This precipitous decline in U.S. carrier market participation is particularly disturbing in light of the DOT/state finding that during the past eleven (11) years the U.S.-Far East air cargo market has tripled in size, and "Japan is the largest U.S. air cargo market in the world and by far the largest market in the region, accounting for 25% of 1986 traffic."

These troubling statistics reveal the extent to which the competitiveness of U.S. air cargo carriers has been severely compromised by Japanese protectionism against further U.S. entry into the Japan and beyond-Japan Far East markets. By comparison, however, Japan's national carriers continue to prosper, primarily due to revenues derived from the carriage of sixth freedom U.S.-Far East freight (e.g., cargo moving over Far East-Japan-U.S. routings).

The aviation bilateral agreement between the U.S. and Japan governs operations over the world's greatest single international traffic lane. Further, Japan is the key to serving the whole of the Far East. Japanese carriers enjoy a natural geographical advantage in the carriage of sixth freedom traffic to and from Far East points behind Japanese gateways, and the Japanese government has vigorously protected this geographic advantage at the expense of U.S. air cargo carriers.

In 1952, the U.S. and Japan entered into a Civil Air Transport Agreement designed to create a balanced, basically open bilateral regime. This Agreement, which remains valid today, contains two elements which are essential to the maintenance of a reciprocal aviation trade relationship -- (a) authority allowing either side to designate multiple carriers to perform U.S.-Japan air services; and (b) significant beyond-market traffic rights to be exercised by the designated carriers of both countries.

Although many amendments to the 1952 Agreement have been made over thirty-six years, none has altered the essential text or character of the original grant with regard to mutual multiple-designation and beyond-market access. However, because the Japanese government refuses to fully observe its bilateral obligations, Federal Express is denied the right to operate through Japan to and from Far East beyond-markets,

while other U.S. air cargo carriers are also subjected to serious restrictions against the conduct of sixth freedom operations, and the U.S. has been unable to secure an agreement with Japan to designate new and unrestricted air cargo services as contemplated by the 1952 Agreement.

In April, 1985, the U.S. and Japan entered into a Memorandum of Understanding ("MOU") which amended the 1952 Agreement in part, and provided an opportunity for both countries to implement important new aviation services. Japan was granted three new passenger service opportunities, and one new unrestricted all-cargo service opportunity, between Japan and the U.S. (subject only to certain maximum weekly frequency limits). In exchange, the U.S. received the right to establish three equivalent new passenger services to Japan, and no new cargo services. However, the U.S. could in the alternative elect to give up one new passenger service option under the MOU and use its third opportunity to establish a new "small package" cargo service to Japan, subject to extreme restrictions on cargo traffic rights, and subject to other restrictions specifically intended to both impede the U.S. carrier's ability to compete for Japan-originating traffic and to prohibit the conduct of through-Japan operations to or from any other points in the Pacific.

After a lengthy competitive hearing, the U.S. DOT selected Federal Express for service over the small package route. However, we were unable to inaugurate service until June 16, 1988 because the Japanese government created serious obstacles in the form of new, unreasonable and unwarranted operating restrictions premised upon "matters of interpretation." In the interest of time I do not propose to explain this complex and technical controversy at length today. However, it is important to note that the additional Japanese carrier named under the 1985 MOU, Nippon Cargo Airlines ("NCA"), commenced essentially unrestricted all-cargo service in May of that year. In contrast, more than three years later Federal Express has only recently been able to commence U.S.-Japan direct "small package" air service, which is prohibited against the carriage of U.S.-Japan/Far East packages individually weighing in excess of seventy (70) pounds. Further, while NCA enjoys virtually unlimited access to the Asian/Pacific market beyond-Japan, Federal Express' direct air service begins and ends in Japan because we cannot fly through Japan to/from other Far East points. Very simply, this situation is intolerable.

Federal Express remains a vigorous proponent of unfettered flexibility for both domestic and international air cargo carriage. Express service demands operational freedom which, to the fullest extent possible, is unencumbered by extra-market forces. The key attributes of Federal Express' operations are

speed, reliability and convenience. In order to combine these attributes into the best possible service offering, it is imperative that we be able to operate a single-entity system of integrated air and surface operations under our direct control from end-to-end. Federal Express' customers place great faith in our ability to keep our promise of offering the fastest and most reliable transportation service in the world, and they are not interested in excuses when we fail.

It is easy to see why such a demanding operation is uniquely susceptible to being crippled by inflexible, unduly burdensome regulatory restrictions. Clearly, the Japanese government has recognized this and has acted upon this basic principle to blunt the competitive prowess of the U.S. air cargo industry through the erection of artificial and discriminatory regulatory barriers.

The latest round of bilateral negotiations, concluded in Tokyo last week, clearly illustrate the Japanese desire to retard the development of competitive U.S. air cargo operations. U.S. negotiators tabled a proposal which would significantly expand the service opportunities for both U.S. and Japanese air cargo carriers by creating a more open regime. This proposal calls for the designation of additional U.S. carriers to engage in basically unrestricted operations with unlimited beyond-Japan service rights. In exchange,

Japanese carriers would be given greater access to important U.S. points, along with expanded beyond-U.S. authority.

Although the U.S. proposal is responsive to the stated needs of each side, the Japanese Government rejected efforts to improve the existing, unsatisfactory aviation bilateral regime. Instead, Japanese negotiatiors advanced a proposal that would extend the small package service restrictions now imposed against Federal Express, introduce new capacity controls over the market, and curtail sixth freedom operations by U.S. carriers. After U.S. negotiators noted that this proposal had already been rejected in December 1986 and July 1988, the Japanese requested new and immediate route rights for its carriers in exchange for an agreement to merely discuss comprehensive revision issues at some future, unspecified date. The U.S. cannot continue to perpetuate Japanese protectionism by engaging in prolonged and unproductive bilateral talks.

A resurgence of U.S. air carrier interests in the Far East will not occur until Japanese restrictions on U.S. carrier operations are relaxed. For several years the U.S. and Japan have been engaged in these "comprehensive revision talks," during which Japan has constantly endeavored to narrow the scope and reduce the number of U.S. air cargo rights set forth in the 1952 Agreement. However, the U.S. has never signed any

document compromising its ability to unilaterally designate new air carriers for the performance of U.S.-Japan cargo services, or surrendering the authority of U.S. operators to handle traffic moving through Japan to points beyond in the Far East.

The U.S. must now act to revive the 1952 Agreement and renew the vitality of its fundamental terms. To this end, the U.S. should select a future date by which Japan is to honor the right of the U.S. to award multiple carrier designations, together with the right of U.S. carriers to engage in reciprocal beyond-Japan operations. If the government of Japan fails to observe the date set by the U.S., the sixth freedom operations by Japanese carriers to and from the U.S. should be suspended, and should remain in suspension; until the U.S. is allowed to designate one or more new air cargo carriers, and all U.S. carriers are given the equal opportunity to serve Far East markets through Japan.

The consequences of a less ambitious strategy have been clearly delineated by the DOT and State. Vigorous and immediate measures are required to implement with Japan the stated goals of U.S. International Air Cargo Policy -- unrestricted entry for U.S. carriers, the removal of restrictions on frequency and capacity, routing flexibility and the elimination of discriminatory practices.

The U.S. can no longer afford the cost of Japanese obstructionism. The balance of economic opportunity for both sides must be restored, and the U.S. must take the initiative by insisting that Japan either honor the whole of the 1952 Agreement (not merely those portions it finds economically advantageous), enter into a completely new agreement allowing the carriers of each country to compete fairly and fully throughout the Far East, or forfeit the ability of its carriers to handle Far East-U.S. sixth freedom freight.

I thank you again for the opportunity to appear before this Subcommittee and discuss issues vital to the economic interests of the U.S. and its international air cargo industry. I will be pleased to answer any questions you may have at this time. Thank you.

A. Doyle Cloud, Jr.
Vice President
Regulatory & Government Affairs
Federal Express Corporation

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PREPARED STATEMENT OF VANCE FORT

Good afternoon. I am Vance Fort, Vice President, International and Governmental Affairs of The Flying Tiger Line Inc. We appreciate the opportunity to present our views on constraints imposed on U.S. service industries in Japan. Our comments today are confined to the air transportation industry. We have focused specifically on the problems encountered by and restrictions imposed on Flying Tigers and other U.S. air freight carriers.

Flying Tigers is the world's largest all-cargo carrier. We operate in the United States, Europe, the Middle East, the South Pacific, South America and Asia. While Japan is our single most important market, Flying Tigers has, for nearly twenty years, been the leading U.S. air freight operator throughout the Pacific Rim nations. Consequently, we have had considerable experience dealing with Japan and operating in its highly restrictive environment.

I. Aviation Agreement and Negotiations

A. Legal Rights v. Implementation

The United States and Japan are signatories to an air transport agreement defining the rights of both parties. However, as with many trade matters between the two countries, the implementation by U.S. companies of the rights set forth in the agreement has been difficult. Although the agreement provides that a U.S. carrier has authority to exercise a specific right, Japanese officials frequently impose restrictions that result in

inefficiencies and additional costs, thereby severely diminishing the right's economic value. At times, those restrictions can be so severe as to prevent any implementation of the right.

In contrast, if a Japanese carrier, or any foreign carrier for that matter, has access to the United States, few restrictions are imposed on its operations. It can hire its own personnel, handle its own baggage and/or cargo, and build its own terminals. In essence, it is accorded national treatment; it is permitted to operate with the same freedoms and flexibilities as a U.S. carrier. For a foreign carrier, access is the key to the U.S. market. For a U.S. carrier in Japan, access is simply the first step in a long, arduous struggle to operate efficiently.

Flying Tigers has long been a proponent of greater competitive opportunities for air carriers and was among the original advocates of domestic deregulation, working with Federal Express and others to achieve the enactment of the first piece of deregulation legislation in 1977. Flying Tigers has also long sought to expand competitive opportunities in foreign markets. However, it is naive to pursue "open skies" in foreign markets such as Japan where our trading partners do not share our view of the importance of competition. With particular regard to Japan, there is little value to the U.S. in obtaining new rights unless it can first be demonstrated that the rights it has already negotiated and paid for can be exercised effectively.

B. Additional Payment to Exercise Rights Already Negotiated

As a result of Japanese obstructionist tactics, the U.S. frequently negotiates with Japan simply to remove restrictions on rights which have already been negotiated and for which the Japanese have already been compensated. In essence, we pay twice for the same authority.

The U.S. has been reluctant to impose sanctions on Japan. Not surprisingly, therefore, numerous operating restrictions or "doing business" problems emerge as U.S. carriers become more competitive with their Japanese counterparts.

C. Restrictions on Flying Tigers

At present, the Japanese are imposing two major restrictions on Flying Tigers' operations that constitute unfair, discriminatory practices. The first involves Flying Tigers' right to carry so called "sixth freedom" traffic from Tokyo to Anchorage and on to Europe, and the second involves the company's right to provide ground handling services for our own freight traffic and that of other foreign carriers operating in Japan. Both rights have been restricted for many years, and the Japanese have been intransigent; they have refused to acknowledge their legal obligations under the U.S.-Japan aviation agreement.

II. Tokyo-Anchorage-Europe Route

A. Sixth Freedom Rights

The U.S.-Japan aviation agreement grants to carriers of each country traffic rights via intermediate foreign points to the territory of the other country and beyond to specified foreign points. These rights are referred to as third, fourth and fifth freedom rights, depending upon the origin and destination of the traffic. The carriage of traffic to and from points behind a carrier's home country is referred to as "sixth freedom" rights. For example, Japan Air Lines ("JAL") and Nippon Cargo Airlines ("NCA"), the two Japanese carriers, carry cargo from Hong Kong through Japan and on to the United States. JAL and NCA's participation in the U.S.-Asia markets is extensive. The U.S. Government estimates that about one-half of the cargo traffic carried by Japan's airlines to and from the United States falls within this "sixth freedom" category. Historically, U.S. carriers have been precluded from making use of their comparable rights to carry traffic between Japan and other points via the United States. For eight years Flying Tigers has been seeking to transport traffic from Japan through the U.S. (Anchorage) and then on to Europe. Because of changing patterns of world trade, such a route, we believe, has become an even greater opportunity in the last two years.

B. Japanese Action

For the last eight years, Japan has prevented Flying Tigers from conducting viable operations over the Tokyo-Anchorage-Europe route. While Japan issued a permit to Flying Tigers, they conditioned it with significant operating restrictions. The U.S., of course, does not impose any such restrictions on the Japanese carriers and has found that such restrictions are improper. The Japanese are deliberately erecting roadblocks that they know to be illegal for the purpose of allowing their own carriers to entrench themselves in the Asia-Europe market.

In 1980, Flying Tigers first attempted to introduce freighter service into the Japan-Anchorage-Europe market. Until that time, carriers relied on belly compartments of their passenger aircraft to serve that market. Since Flying Tigers' first efforts to provide this service were rebuffed by the Japanese, the market has expanded from 0 weekly flights to 13, with Japanese carriers controlling 12 of those either directly or through pooling agreements.

C. DOT Orders

When Flying Tigers first filed a schedule in Japan showing the Tokyo-Anchorage route in 1980, the Japanese responded by imposing severe restrictions on the route that substantially diminished the profitability of the proposed service. After years of unsuccessful attempts by Flying Tigers management to

persuade Japanese authorities to remove the restrictions and approve the proposed schedule, in 1986, the Department of Transportation ("DOT") ordered the two Japanese carriers to file operational information on their "sixth freedom" traffic to the U.S. The purpose was to compile sufficient information for use in crafting retaliatory measures against Japan for impeding U.S. implementation of the Tokyo-Anchorage-Europe right. At the behest of the Japanese Government, the Department of State prevailed upon the DOT to withdraw the order, and this acquiescence meant the U.S. could not demand reciprocal treatment for U.S. airlines operating in Japan.

In the Spring of 1988, Flying Tigers again filed in Japan to operate the Tokyo-Anchorage-Europe route. The company's schedule was again restricted, and this summer Flying Tigers filed a complaint against Japan pursuant to the International Air Transportation Fair Competitive Practices Act. 1/ That complaint alleged that Japan's action constituted an unreasonable and unjustifiable discriminatory practice.

After much discussion and Congressional review, the United States took a strong stand at negotiations with Japan this

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1/ A carrier files a complaint under this statute only as a last resort. Its filing signifies that all other avenues of communication and possible resolution have been tried and failed. Carriers are reluctant to initiate such proceedings because, during their pendency, the carrier becomes an easy target for further discriminatory action by officials of the host country in which it is operating.

past July and demanded that the route be approved. The Japanese refused. 2/

The DOT subsequently issued Order 88-9-20 which (1) found that the Japanese action was an unreasonable and unjustifiable discriminatory practice; (2) restated Flying Tigers' right under the U.S.-Japan agreement to operate the route; (3) stated that they would defer imposing sanctions while attempting to resolve the matter through diplomatic means; and (4) ordered the Japanese carriers to submit, by September 15, information on their "sixth freedom" operations. 3/

On September 14, 1988, the Japanese carriers filed documents with DOT stating that "on the basis of reciprocity regarding data submission, the Government of Japan has instructed JAL to refrain from submitting the data requested by DOT until such time as the U.S. carriers filed with the Government of Japan similar data." This response constituted the height of arrogance. Moreover, the economic fact is that the Japanese carriers are continuing to carry extensive amounts of "sixth freedom" traffic, while U.S. carriers cannot. In short, the Japanese carriers are defying an Order of the U.S. Government, and the Japanese Government is denying U.S. carriers the right to compete.

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2/ Both before and after those negotiations, numerous members of Congress urged the Secretary of Transportation to resolve the issue expeditiously.

3/ A copy of the Order is attached. See Attachment A.

In response to this affront, U.S. negotiators again took a strong stand on this issue at the U.S.-Japan negotiations in Tokyo last week. However, the discussions ended without agreement, and at the conclusion of these negotiations, as before, no progress had been made toward reaching a resolution. As the matter now stands, the U.S. Government apparently remains ready to negotiate again for this right that it already holds but cannot use, while Japan continues to enjoy the economic windfall resulting from the preclusion of U.S. carriers from the market.

III. Ground Handlin-

A. Rights of Japanese vs. U.S. Carriers

Ground handling is the process whereby cargo is loaded on or off the plane and, in the case of incoming freight, moved through customs. Studies have shown that international air freight spends, between tender and delivery, an average of 92 percent of its time on the ground. Thus, ground handling involves a significant portion of a carrier's activities and its costs.

In the United States, Japanese carriers are free, at every airport at which they operate, to build their own facilities, perform their own ground handling, and reduce their unit costs by contracting to handle traffic of other carriers. Similar rights are not afforded U.S. carriers operating in Japan.

B. 1986 U.S.-Japan Accommodation

In 1985, the Japanese sought and received authority to have a new all-cargo carrier, NCA, operate six frequencies a week between the United States and Japan. In 1986, NCA applied for authority to operate three additional frequencies each week. This request was included in broader U.S.-Japan aviation negotiations, and in the Spring of that year, a U.S.-Japan accommodation was reached. As part of that agreement, NCA was granted the very valuable additional frequencies, and Japan affirmed the right of Flying Tigers to perform ground handling services. Flying Tigers had been seeking actively to exercise these rights in Japan since 1979, only to be denied them by the Japanese.

In the Spring of 1987, long after NCA began operating its additional frequencies, Flying Tigers was informed by Japanese officials that it would not be entitled to perform the ground handling services. In June, 1987, after all other attempts to resolve the matter had failed, Flying Tigers filed a formal complaint against Japan alleging that denial of the right was a clear violation of the 1986 accommodation and constituted an unfair and unreasonable discriminatory practice. This complaint resulted in discussions by the U.S. and Japan of the ground handling issue again, and in August, 1987, the two countries reached an agreement in principle.

Ground handling rights for Flying Tigers were to be implemented in three phases: First, Flying Tigers could perform

ground handling services for those cargoes that "transited" Japan (i.e., came from the U.S., were transloaded in Japan, and continued on to another destination such as Taiwan or Hong Kong); second, effective February 1, 1988, Flying Tigers could perform ground handling for all of its own imported cargoes; and third, effective August 1, 1988, Flying Tigers could offer its ground handling services to all other carriers.

Phase I was implemented without difficulty, but not Phase II. Throughout December, 1987 and January, 1988, Flying Tigers made numerous applications pursuant to Japanese law for the license authorizing the carrier to implement fully the ground handling rights under Phase II. After U.S. officials intervened, the authority was granted to coincide with the February 1 deadline.

Finally, in April, 1988, Flying Tigers filed for authority to implement Phase III of the ground handling agreement. As part of that application, the company sought authority to use 8,000 square meters of additional space. Flying Tigers explained that it did not have adequate space and without the additional 8,000 square meters, the authority to perform ground handling for other carriers was meaningless.

The Japanese authorities were not responsive, although the company was repeatedly referred to several Japanese agencies for proper authorization. Flying Tigers worked with Japanese Customs, the Ministry of Transport and the New Tokyo

International Airport Authority to gain the necessary approvals. None of these agencies, however, resolved the issue despite numerous meetings and communications.

At Flying Tigers' request, U.S. negotiators, in July of this year, again raised the ground handling issue during the U.S.-Japan negotiations in Washington. During these negotiations, and in subsequent meetings between company officials and Japanese authorities, the Japanese refused to cooperate. Since the ground handling question was first raised in 1979, the response has consistently been that there is no space, and regardless of space availability they have no obligation to provide additional space. When the issue was raised by the U.S. at last week's negotiations, the Japanese response was again the same.

During this same period, NCA was seeking authority to continue operating the three additional frequencies it received in 1986. These frequencies were granted on a temporary basis; the current grant of temporary authority for NCA expires on October 9, 1988. Accordingly, Flying Tigers is urging DOT to deny NCA its authority or at least to limit the number of frequencies until Flying Tigers is granted the license needed to implement Phase III and the additional space to make it a meaningful right. On August 10, 1988, DOT issued an Order finding that (1) Flying Tigers has the right to perform ground handling services for other carriers; (2) Flying Tigers has the right to

receive the additional 8,000 square meters of space necessary to implement that authority; and (3) Japan has the obligation to provide the necessary license for the service and the space. 4/

As is clear from the review of this lengthy ordeal, Japanese restrictions imposed on Flying Tigers' ground handling rights are another method by which the Japanese attempt to dominate the U.S.-Japan air cargo market. To date, no resolution has been offered by the Japanese.

IV. Kansai International Airport

Since 1986, the construction of Kansai International Airport has been a contentious matter in U.S.-Japan trade relations. U.S. firms have been repeatedly denied the right to participate in construction of the airport. After many discussions and many negotiations between the two governments, a framework was finally established for participation by U.S. firms in Japan's public works market.

While other U.S. trade negotiators have actively focused on the problems associated with building the airport, U.S. aviation negotiators appear to be reluctant to focus on problems anticipated with its operation, despite the fact that U.S. carriers have been raising these problems for the past two years. As currently designed, Kansai will be wholly inadequate to meet the space and operational needs of U.S. and other foreign carriers. Unless something is done, Kansai will replicate Narita's

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4/ A copy of the Order is attached. See Attachment B.

inadequacies involving such crucial matters as slots, terminal facilities, runways and customs processing.

A. Background

Japanese industry is largely centered around two major cities -- Osaka and Tokyo -- each of which is served by a major international airport. Prior to 1978, Tokyo was served by Haneda International Airport. U.S. carriers experienced numerous problems operating at Haneda; lack of airport access and ground handling authority were two significant ones.

Japanese officials repeatedly assured U.S. carriers that these problems would be resolved to their satisfaction as soon as the new Narita Airport was completed. They urged U.S. carriers to be patient. In response to U.S. concerns, the Japanese authorities met with representatives of the international carrier community and received numerous specific recommendations for the fair and efficient operation of the new airport. A concerted and coordinated effort was made from the very earliest stages by all affected airlines to influence Narita's design and plan of operation. The Japanese, however, chose to ignore many of the recommendations entirely and built Narita largely according to the original plans. Thus, the opening of Narita did not resolve "doing business" problems; it simply resulted in the transfer of old problems to the new facility as well as the creation of new problems.

The U.S. Government had been encouraged by signs of Japanese "cooperation" with the international carrier community and, therefore, did not press for adoption of the carriers' recommendations relating to Narita. The resulting Narita Airport favors the Japanese Government's restrictive aviation policy by maintaining a capacity and operational bottleneck at Tokyo, thereby limiting the commercial opportunities for U.S. carriers. The same process is now occurring with Kansai.

B. Kansai Design and Operation

In anticipation of the opening of Kansai, the international carriers presently operating at Osaka have formed a working group to facilitate the exchange of views between the airport planners and airport users. The group is a Subcommittee of the Board of Airline Representatives in Japan. Last Spring, the Japanese authorities circulated among this group the latest proposals for Kansai, including the proposed layout for passenger and cargo facilities. A meeting was convened at which many airlines objected to the plans. As a result, Japanese authorities postponed completion of the airport plans, pending receipt of specific recommendations from the foreign carriers. 5/ In its submission, the Board of Airline Representatives in Japan identified sixteen items of primary concern, including several related to the size, design and location of passenger facilities.

With respect to planned cargo facilities, the group

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5/ A copy of that submission is attached. See Attachment C.

noted that the overall space for cargo handling was inadequate; while there were 14 loading positions for 747 freighters, the proposed warehouse facilities would accommodate about one half that number of aircraft at any given time. In addition, the airport authority is proposing a monopoly ground-handling service. While the authority is prepared to consider the right of carriers to self-handle their freight, this right would be difficult to exercise given the plan for a common, undivided warehouse area that, as already noted, is too small. Moreover, the airport authority has no plans at all for carriers to handle the import freight of other carriers.

Other concerns expressed by the carriers included the limitations on the length of the runway, which would restrict the operational range and payload of aircraft over the long trans-Pacific routes. In addition, the proposed delivery of aviation fuel by barge rather than pipeline is likely to increase the cost of the airport's operations.

The Japanese claim that they are considering these recommendations; however, from informal discussions in Japan it appears that they are planning, once again, to ignore them and to proceed as originally planned. The history of Narita is being repeated. U.S. carriers have spent the last eight years attempting to resolve the "doing-business" problems at Narita; as outlined earlier in my statement, we know them well. Accordingly,

the U.S. Government should do everything in its power to prevent the same problems from arising at Kansai.

However, this is not happening. U.S. negotiators involved with the "doing business" or operational restrictions at Narita for years have failed thus far to insist that the Japanese take "corrective" action at Kansai.

C. Recommendation on Kansai

Flying Tigers, therefore, recommends that this Subcommittee work closely with the U.S. negotiators and urge them to review with care the recommendations on Kansai made by the U.S. and other international carriers. The negotiators should then take all appropriate steps to ensure that those concerns are addressed in the design and operational procedures implemented at Kansai International Airport. Experience has shown that with Congressional participation, U.S. negotiators are certain to become more involved with the facility's plans. That involvement will, in turn, bring U.S. carriers one step closer to having the opportunities and regulatory environment necessary to compete on a level playing field with their Japanese counterparts.

V. Conclusion

While I have provided a review of restrictions currently imposed on Flying Tigers' operations by the Japanese, these are only two of many we have experienced over the past 10 years. Often at the tremendous cost of time, energy, and lost or diminished commercial opportunities, we have resolved many of them

ourselves. For others, we have sought the assistance of our government. It has been and continues to be a constant struggle to remain competitive in the Japanese restrictive environment.

Accordingly, it is important for the United States to remain vigilant in enforcing the existing rights of U.S. carriers and not to become intoxicated by the prospect of making new deals. The constant quest for a new and broader agreement ignores the realities of our aviation relationship. Only if the Japanese acknowledge the rights freely negotiated and paid for by the United States will U.S. carriers remain viable and competitive in the U.S.-Japan market. Only then will the proper groundwork have been laid for a broad revision of our aviation relationship.

* * *

I will be happy to answer any questions you may have, and Flying Tigers will be pleased to work with you and your staff on any of the issues raised in our statement.

Thank you very much.

Order 88-9-20

ATTACHMENT A

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 8th day of September, 1988

| | |
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| Complaint of | |
| THE FLYING TIGER LINE INC. | |
| Against | Docket 45699 |
| THE GOVERNMENT OF JAPAN | SERVED: SEP 8, 1988 |
| under section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974, as amended | |

ORDER

On July 13, 1988, The Flying Tiger Line Inc. filed a complaint under section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (IATFCPA) 1/ against the Government of Japan.

Flying Tigers states that the Government of Japan has refused to authorize it to operate certain proposed Tokyo-Anchorage-Europe all-cargo flights without the imposition of sixth freedom traffic restrictions and detailed reporting requirements; that the United States-Japan Air Transport Services Agreement of 1953, as amended, authorizes U.S. air carriers to operate scheduled all-cargo service in the market on an unrestricted basis; and that Flying Tigers is being denied valuable route rights and sixth freedom traffic rights available under the Agreement, while equivalent U.S.-Japan route rights, including sixth freedom traffic rights, are being enjoyed by Japanese carriers on an unrestricted basis. Flying Tigers submits that intergovernmental attempts to resolve the issue have been unsuccessful and that the discriminatory treatment it is suffering constitutes a denial of its fair and equal opportunity to compete. As an appropriate remedy, Flying Tigers requests that the Department impose restrictions on the U.S. cargo operations of Japanese-flag carriers sufficient to compensate for the restrictions imposed by the Government of Japan on Flying Tigers' proposed Tokyo-Anchorage-Europe schedules.

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1/ See 49 USC 1159(b).

The International Air Transportation Competition Act of 1979 (IATCA) substantially expanded our ability to deal with allegations of unfairly restrictive and discriminatory practices by foreign governments and foreign airlines. We now possess power to respond quickly to such practices through amendments to section 402 of the Federal Aviation Act of 1958, as amended, and section 2 of IATFCPA which permit us to deny, alter, amend, modify, suspend, cancel, limit or condition any foreign air carrier permit or tariff, if we find such action to be in the public interest. They also enable us to act without a hearing on written evidence and arguments submitted by interested parties in appropriate circumstances. Furthermore, to ensure that complaints filed under this legislation receive prompt attention, section 2 of the IATFCPA provides that we shall approve, deny, dismiss or set a complaint for hearing, or institute other procedures proposing remedial action, within 60 days after receipt of the complaint. However, we may extend the period for taking action for an additional 30 days, if we conclude that it is likely that the complaint can be satisfactorily resolved through negotiations. 2/

With these considerations in mind, we invited all interested persons to answer Flying Tigers' complaint in Docket 45699. 3/ We also required Japan Air Lines (JAL) and Nippon Cargo Airlines (NCA) to file with the Department certain information related to their scheduled cargo services to the United States, in order to facilitate expeditious action on the complaint within the time constraints of IATFCPA. 4/

JAL filed an answer in opposition to the complaint, objecting to the requested imposition of sanctions against Japanese-flag carriers and urging the Department to await the outcome of intergovernmental consultations before imposing retaliatory countermeasures. JAL contends that the issues raised in Flying Tigers' complaint are to be discussed in upcoming U.S.-Japan aviation consultations; that it would be premature for the Department to make findings against the Government of Japan and to

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2/ We subsequently may further extend the action deadline for up to 90 more days, if we conclude that negotiations have progressed to the point that a satisfactory resolution of the complaint appears imminent. See Section 10011 of the Omnibus Trade and Competitiveness Act of 1988. P.L. 100-418, August 23, 1988.

3/ Order 88-8-6, August 2, 1988.

4/ JAL and NCA, acting on the advice of the Government of Japan, each filed a motion to extend the time for filing the specified information until completion of further intergovernmental discussions related to the complaint. Flying Tigers and the State of Alaska each filed a consolidated answer to the motions. After reviewing these answers, we decided to allow for replies to the motions. Notice dated August 29, 1988. JAL and NCA each filed a reply to which Flying Tigers filed a reply accompanied by a motion to file an otherwise unauthorized document. We will grant Flying Tigers' motion.

impose restrictions on Japanese-flag carriers' operations until those consultations have been completed; and that deferral of action on Flying Tigers' complaint, pending completion of the intergovernmental negotiations, would be consistent with the spirit of IATFCPA.

Decision

A. Complaint

We are approving Flying Tigers' complaint. We conclude that the Japanese Government's unilateral imposition of restrictions on U.S. air carriers' sixth freedom operations involving Japan is discriminatory and constitutes a violation of the United States-Japan Air Transport Services Agreement.

Flying Tigers was clearly entitled to introduce the service and to do so without the unilateral imposition of an arbitrary standard against which the Japanese Government would alone judge bilateral compliance. It is specifically agreed between the U.S. and Japanese Governments that all schedule filings envisaging changes in capacity or frequency will be permitted to take effect on the date specified in the filing and that only after a six months period of operations would they be subject to review for consistency with the capacity principles of the bilateral Agreement.

The Japanese limitations on Flying Tigers' proposed operations simply cannot be reconciled with Flying Tigers' rights under the Agreement, nor with the ex post facto review provisions of that Agreement. Moreover, those Japanese-imposed limitations subjected Flying Tigers to patently discriminatory treatment. We have imposed no such restrictions on Japanese carrier operations, even though we have recognized "the considerable volume of sixth freedom cargo traffic transported to and from the U.S. by JAL." 5/ Indeed, in expressing our concern over Japanese resistance to Flying Tigers' recent application, we expressly noted Flying Tigers' statement that much of the cargo traffic carried to and from the United States by Japanese carriers is sixth freedom traffic. 6/ Nothing in the record indicates the contrary. U.S. air carriers are entitled to U.S.-Japan cargo traffic rights under conditions no less favorable than those accorded to Japanese carriers by the United States. Nevertheless, the Government of Japan continues to discriminate against Flying Tigers.

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5/ See Order 86-4-42, April 15, 1986.
6/ See Order 88-8-6, August 2, 1988.

Against this background, we conclude that the failure of the Government of Japan to approve Flying Tigers' Tokyo-Anchorage schedules without the imposition of sixth freedom traffic restrictions and detailed reporting requirements is an unreasonable and unjustifiable restriction upon a U.S. airline and constitutes an unjustifiable, unreasonable, and discriminatory practice inconsistent with the United States-Japan Air Transport Services Agreement and related agreements. We have consistently viewed any unilateral imposition of restrictions on U.S. carriers' operations as a most serious violation of this country's bilateral rights. 7/

In these circumstances, under section 2 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, the United States may take such action as deemed in the public interest to rectify the situation. We fully intend to impose such sanctions as are necessary. The United States and Japanese Governments continue, however, their efforts through diplomatic channels to resolve the issues raised by Flying Tigers' complaint. In this connection, they have agreed to discuss those issues during intergovernmental talks to be held September 19-22, 1988. Under these circumstances, we conclude that the public interest will be best served by deferring a decision on appropriate sanctions, so that we can reassess the situation in light of diplomatic initiatives to resolve the issues involved here.

B. Information Request

We will deny the motions of JAL and NCA for an extension of time to file the information required by Order 88-8-6, and will require the carriers to submit the subject information within five days of the service date of this order. 8/ While we have decided to defer a decision, at this time, on the appropriate sanctions to be imposed in this case, we must be prepared to act expeditiously to impose effective countermeasures in the event that diplomatic initiatives do not resolve the dispute. The service data required by Order 88-8-6 will facilitate our ability to determine the remedial action we should take in responding to the Japanese restrictions on U.S. carrier services. In these circumstances, we do not find that extension of the information filing data is in the public interest.

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7/ See, e.g., Order 87-3-8, March 4, 1987, Order 88-6-40, June 28, 1988, and Order 88-8-6, supra.

8/ We would be willing to accept receipt of summary data within five days with details to follow, provided that representatives of the Japanese carriers contact us immediately and reach a mutual understanding with us as to what will constitute an acceptable summary filing.

**ACCORDINGLY,**

1. We approve the complaint and grant the relief requested by The Flying Tiger Line Inc. in Docket 45699 to the extent that it asks us to make the statutory findings required by section 2 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended;

2. We defer action on the issue of imposing sanctions in the proceeding in Docket 45699 until further order of the Department;

3. We grant the motion of The Flying Tiger Line Inc. for leave to file an otherwise unauthorized document in Docket 45699;

4. We deny the motions of Japan Air Lines Co., Ltd. and Nippon Cargo Airlines Co., Ltd. for an extension of time in Docket 45699;

5. We order Japan Air Lines Co., Ltd. and Nippon Cargo Airlines Co., Ltd. to file with the Department within five (5) days of the service date of this order the information specified in the Attachment to Order 88-8-6; and

6. We will serve a copy of this order on The Flying Tiger Line Inc., Emery Worldwide Air Freight, Inc., Federal Express, Inc., United Air Lines, Inc., Northwest Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Japan Air Lines Co., Ltd., Nippon Cargo Airlines Co., Ltd., All Nippon Airways Company, Ltd., the State of Alaska, the Ambassador of Japan in Washington, D.C., and the United States Department of State (Office of Aviation).

By:

GREGORY S. DOLE
Acting Assistant Secretary
for Policy and International Affairs

(SEAL)

ATTACHMENT B
Order 88-8-31

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

88-8-31

SERVED AUG 11 1988

Issued by the Department of Transportation
on the 10th day of August, 1988

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| Application of<br><br>NIPPON CARGO AIRLINES COMPANY, LTD.<br><br>for an exemption pursuant to section 416(b) of the Federal Aviation Act of 1958, as amended. | Docket 44178 |

ORDER GRANTING EXEMPTION

Summary

We are granting Nippon Cargo Airlines Company, Ltd. (NCA), an exemption from section 402 of the Act to operate three additional all-cargo flights per week beyond those provided for in its foreign air carrier permit (for a total of nine) between Tokyo and San Francisco/New York, for a sixty-day period, through October 9, 1988. 1/

Application

By application filed July 13, 1988, NCA requests an exemption from section 402 of the Act to extend its authority to operate three additional round-trip all-cargo flights per week between Tokyo and San Francisco/New York. 2/ NCA requests that its exemption be granted for one year and that the Department complete processing its pending application for this authority by permit amendment in Docket 44496.

1/ By Order 86-3-42, we granted NCA a foreign air carrier permit to perform all-cargo services between Tokyo and the coterminal points San Francisco and New York. NCA's permit limits it to six wide-body round-trip all-cargo flights per week. On November 14, 1986, NCA filed a permit amendment application in Docket 44496 to incorporate the additional authority at issue here. That application remains pending.

2/ On various dates since August 1986, the Department has granted NCA exemption authority to operate the three additional frequencies at issue here. See Orders 86-8-12, 86-12-66, 87-5-41, 87-7-43, 87-8-38, 87-9-37, 87-10-27, 87-11-35, and 88-2-36.

Answers and Reply

On July 22, 1988, The Flying Tiger Line Inc. filed an answer. Flying Tigers states that because the Government of Japan has not given it the authority and space to conduct third party handling services at Narita Airport, we should refuse to renew one of NCA's three additional frequencies unless the Japanese authorities grant Flying Tigers, by August 10, 1988, the authority and space necessary to conduct full ground handling services at that airport.

Flying Tigers states that it continues to be frustrated in its attempt to operate and exercise the ground handling rights contained in the July 1986 accommodation between the United States and Japan. It states that after filing, and subsequently refiling, a complaint under the International Air Transportation Fair Competitive Practices Act on 1974 (IATFCPA), it received assurances from the U.S. Government that the Government of Japan had agreed to allow it to conduct third party handling by August 1, 1988. 1/ It states that on April 26, 1988, it filed with the Japanese authorities a plan to conduct third party handling, commencing August 1, 1988, and, in that application, requested an additional 8,000 square meters of space at Narita, which it states is necessary for it to operate its handling services.

Flying Tigers states that after receiving no response to its request, it asked to meet with representatives of the Japanese Customs Bureau to discuss this matter. It states that it was subsequently referred to the Ministry of Transport, then to the New Tokyo International Airport Authority (NTIAA), and that, to date, no meeting has taken place with NTIAA representatives. It states, however, that it was informally advised by Japanese officials that its request would not be granted because of the lack of additional space at Narita Airport, and that the right to conduct third party handling services was never intended by Japan to include a right to space to conduct those services.

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1/ On May 1, 1987, Flying Tigers filed in Docket 44851 an IATFCPA Complaint (49 USC 11596 (b)(2)) against the Government of Japan alleging that U.S. carriers have been unable to conduct ground handling services at Narita Airport in the same manner as Japan Air Lines, Inc. In Order 88-2-5, we terminated that proceeding, but gave Flying Tigers assurances, and put the Japanese Government on notice, that should an appropriate application by Flying Tigers for authority to provide ground handling for other carriers at Narita be unreasonably denied, or action unreasonably withheld, we would immediately take appropriate action with respect to the exemption authority held by NCA for its additional frequencies. We also stated that we would retain jurisdiction over the issues raised in Flying Tigers' IATFCPA complaint by transferring all pleadings in that proceeding to Docket 44178.

On August 1, 1988, Flying Tigers filed an amended answer. 4/ It states that at the most recent discussions between the United States and Japan, the Japanese representatives offered no hope of resolving its problem, stating that space at Narita is not available. Flying Tigers believes that, because it has still not been given the authority and ability to exercise fully its right to conduct its handling services, we should immediately limit NCA's authority to two, rather than the current three, additional frequencies, and limit the duration of this authority to no more than one month.

On July 28, 1988, Federal Express Corporation filed an answer stating that it does not oppose NCA's request. It asks, however, that we limit the duration of NCA's authority to three months, pending the satisfactory resolution of a number of outstanding cargo issues.

On August 5, 1988, NCA filed a reply. It states that the Government of Japan has approved Flying Tigers' request to conduct self handling at Narita, and has indicated its willingness to allow U.S. carriers to conduct third party handling when proper application procedures are followed. It states that it is aware of no change in the position of the Government of Japan on this issue, and that Flying Tigers has asserted no change. NCA notes that Flying Tigers has more space at Narita than it does, and states that, in seeking additional space as a part of its request for third party handling authority, Flying Tigers is attempting to create a new obligation on the part of the Government of Japan to provide space at Narita. NCA states that the Government of Japan never agreed to provide such space and that, in fact, additional space is not available at Narita. Finally, NCA states that Federal Express, in its answer, failed to identify what outstanding cargo issues warrant resolution.

Recent U.S.-Japan Aviation Talks

Between July 26-29, 1988, delegations representing the United States and Japan met in Washington, D.C., to discuss, among other things, Flying Tigers' request for additional cargo space at Narita Airport.

Decision

After careful consideration of the pleadings in this case, as well as the issues raised in Flying Tigers' IATFCPA complaint as they relate to this proceeding, we have decided to grant NCA a two-month exemption to operate the three additional frequencies it requests over the routing Tokyo-San Francisco/New York. This

4/ Flying Tigers accompanied its amended answer with a motion for leave to file. We will grant the motion.

authority will be effective August 11, 1988, and will remain in effect through October 9, 1988. 5/ It will be subject to the terms, conditions and limitations of NCA's foreign air carrier permit.

We agree with Flying Tigers and Federal Express that the term of NCA's authority should be limited. The issue of Flying Tigers' ability to exercise its right to conduct third party cargo handling is of particular concern to us, and we are not prepared to extend to NCA long-term authority to conduct its additional frequencies while this issue remains unresolved. This is especially so in view of the fact that during the recent July talks, no significant progress was made to secure from the Japanese delegation a commitment that Flying Tigers would be able to obtain additional cargo space at Narita.

On the other hand, we are not prepared immediately to take away one of NCA's frequencies or to limit the term of any renewed authority to one month, as Flying Tigers recommends. We believe that such action, at this time, would be counter-productive and would provide insufficient time to resolve this issue.

At the July talks, the Japanese stated that they had instructed the NTIAA to meet with and discuss the matter fully with Flying Tigers. We believe that granting NCA's three frequencies for a sixty-day period will provide all parties with sufficient time and a suitable environment in which to find a satisfactory resolution to this matter. At the upcoming meeting with NTIAA, we would expect Flying Tigers to be given complete information on the availability of space at Narita.

In the meantime, we will maintain tight control over NCA's authority pending Japanese action on Flying Tigers' request for additional space at Narita. In Orders 88-2-5 and 88-2-36 we placed the Government of Japan and NCA on notice that we would take appropriate action should the Government of Japan unreasonably deny, or withhold approval of, an appropriate application filed by Flying Tigers to provide ground handling for other carriers at Narita Airport. In this regard, while the July 1986 U.S.-Japan accommodation does not explicitly provide for additional airport space to be made available to U.S. carriers conducting agreed ground handling services, we believe that clearly and logically implicit in that accommodation is the necessity that U.S. carriers have available to them adequate space and other requisite facilities to effectuate their rights.

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5/ The duration of this authority is for a period of fewer than 180 days and therefore is not a license with reference to an activity of a continuing nature within the meaning of 5 USC 558(c). See 14 CFR Part 377.

In view of the above we find that: (1) immediate action is required on this application; (2) there is an immediate public need for the proposed services; (3) grant of this exemption authority, as conditioned, is consistent with Department policy and the public interest; and (4) our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We grant Nippon Cargo Airlines Company, Ltd., an exemption from section 402 of the Act to permit it to conduct three weekly round-trip all-cargo flights, in addition to the six authorized in its foreign air carrier permit, between the terminal point Tokyo, Japan, and the coterminal points San Francisco, California, and New York, New York;

2. The authority granted in ordering paragraph 1 is subject to all applicable conditions of NCA's foreign air carrier permit issued by Order 86-3-42;

3. This exemption shall be effective on August 11, 1988, and shall terminate on October 9, 1988;

4. We grant Flying Tigers' motion to file on amended answer;

5. To the extent not granted, we deny NCA's application in Docket 44178;

6. We may amend, modify, or revoke this exemption at any time and without hearing; and

7. We will serve a copy of this order on Nippon Cargo Airlines Company, Ltd., Emery Air Freight Corporation, Rosenbalm Aviation Inc., The Flying Tiger Line Inc., United Air Lines, Inc., Federal Express, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines., All Nippon Airways Company, Ltd., Japan Air Lines Company, Ltd., Northwest Airlines, Inc., the Ambassador of Japan in Washington, D.C., the Department of State (Office of Aviation) and the Federal Aviation Administration (AFS-220).

By:

MATTHEW V. SCOCOZZA
Assistant Secretary
for Policy and International Affairs

(SEAL)

ATTACHMENT C

THE BOARD OF AIRLINE REPRESENTATIVES IN JAPAN

TOKYO

September 2, 1988

Mr. Hans Fugl-Svendsen
Regional Technical Director
Asia and Pacific
International Air Transport Association
G.P.O. Box 1196
Bangkok, Thailand

Dear Mr. Fugl-Svendsen,

During your visit to the BOAR in April of this year, it was agreed that we would provide you a list of our carriers' concern relating to the New Kansai Airport. With the meetings scheduled for September 5 and 6 in Osaka I'd like to take this opportunity to provide you with that list. The following is not shown in any specific priority, but rather represents the general concerns as expressed by the BOAR members.

1. First Class lounge should be located airside i.e. after CIQ formalities. Restaurant facilities should also be provided airside.

2. Baggage facilities should be as simple as possible and prefer semi automatic system unless there is available a sutiable automatic system by proven manufacturer in Japan as imported system could be subject to maintenance back-up problems. Ample space must be provided for X-ray equipment to meet security needs.

3. Priority should be given to smooth traffic flow around the terminal areas and not to repeat current Narita situation. It is also our concern as to whether 3 lanes for one direction on access bridge will be sufficient.

4. Maximum parking lots should be provided for the convenience of travelling public.

5. We support the use of CUTE system.

6. We strongly oppose the establishment of CAT and ACCT. Cargo handling must be concentrated within airport premises.

7. Efforts should be taken to guarantee the adequcy of space for ULD storage, build-up, warehousing, and handling of cargo. Options should be reserved to self-handle both export and import cargo in own warehouse. At least, two or more import common warehouses should be built and operated to leave multi-handling choice for airlines. Facilities for carriers with bilateral rights to perform import and export ground handling services for other carriers should be guaranteed.

8. We definitely need dedicated check-in island, service counters, information counters and boarding gate lounge.

9. There should be adequate and efficient facilities for handling of handicapped passengers.

10. We are concerned that the paper issued by KIAC giving basic guidelines for airline-related facilities for discussion at the ACC/KIAC meeting on 5/6 September shows bias to the requirements of the national carrier(s). This, if factual, should be strongly resisted and equitable treatment for all sought.

11. Bearing in mind the nature of the terminal construction we are extremely concerned over the cost implications to the airlines which must be kept to a minimum.

12. The transit passenger facilities as promulgated look messy. They should be kept as simple as possible, yet meet the needs of the transit passengers, i.e. shower facilities, etc.

13. Sufficient space must be made available for at least two flight kitchens on the terminal island.

14. Ensure Customs, Immigrations, Security and other governmental agencies adequately staff the facilities to maximize utilization.

15. Consideration should be given to allocate airline offices facing the ramp area.

16. Locate duty free shops behind security check point.

In addition the BOAR endorses the positions as outlined in the circulars attached which are taken from the February 15-17, 1988 Terminals Working Group meeting and the April 11-12, 1988 ACC Cargo Working Group comments.

We appreciate your efforts in this project. If we can be of any assistance in providing additional information, please do not hesitate to contact me.

Sincerely,

A. W. Johnson
Chairman
Board of Airline
Representatives in Japan

PREPARED STATEMENT OF MAUREEN R. SMITH

Mr. Chairman, I am honored to have the opportunity to testify before your subcommittee on an issue we have worked on for a long time -- the access of U.S. companies to the Japanese construction market. Today I will talk about the agreement we have negotiated with the Government of Japan on this subject, how it's being implemented, and most important, the actual business results to date. I will also indicate some upcoming contract decisions which we will be watching closely, and suggest some considerations for viewing the agreement in a broader perspective.

After my presentation I will be happy to answer any questions you may have.

AGREEMENT

To understand what the agreement is all about, and whether we have made any progress, it is necessary to look back first at where we were before these negotiations began.

In the past forty years, there had been only one public works contract awarded to an American firm in Japan--and that firm had been unable to complete the job.

Our firms could not even be considered for work on major Japanese construction projects unless they had been licensed by the Ministry of Construction. And of course, they could not get a license unless they had previously worked in Japan.

Beyond this, there were no published registration or bidding procedures. There were no set time periods to apply for "designated bidder status" or, if successful, to submit bids. No explanations were given to firms who applied but were rejected or bid but were not selected. There were no pre-bid conferences or disputes mechanisms.

On March 31, 1988, we reached agreement with the Japanese government on procedures which allow our firms to enter and compete in the Japanese construction market. This agreement went into effect with an exchange of letters between Ambassador Matsunaga and Secretary Verity on May 25, 1988.

The agreement is made up of five letters exchanged between the two governments. These form an agreement which gives U.S. firms a chance to bid on an estimated $16.9 billion in major construction projects in Japan over the next 10 to 15 years. The covered projects are: 1) Kansai International Airport, 2) Trans-Tokyo Bay Highway, 3) NTT Headquarters Building, 4) Haneda Airport Expansion, 5) New Hiroshima International Airport, 6) Tokyo Port Redevelopment, 7) Ise Bay Highway, 8) Akashi Straits Bridge, 9) Minato Mirai 21 Project, 10) Kansai Science City, 11) New Kitakyushu Airport, 12) Tokyo Teleport, 13) Technoport Osaka, and 14) Rokko Island.

Three sets of special procedures are set out, depending on the type of project or commissioning entity: Kansai (K-1) procedures, Special Measures (K-2) procedures, and K-3 procedures.

Kansai procedures are the most open and transparent, and roughly parallel our own federal procurement regulations. In addition to Kansai airport, these also apply to the Tokyo Bay Bridge and the new NTT headquarters building project.

K-2 procedures, or Special Measures, are virtually the same except the time between designation and bidding for construction services is 40, rather than 60 days, and there is no specific provision for International Chamber of Commerce arbitration procedures. These apply to Government of Japan-commissioned portions of seven projects: the Haneda Airport Expansion, the New Hiroshima Airport, Tokyo Port Redevelopment, the Ise Bay Highway, the Akashi Straits Bridge, the Yokohama Minato Mirai 21 Project, and the Kansai Science City.

These procedures spell out exactly what a firm needs to do to register, apply and bid for construction work in Japan. A company can now track its progress through the entire process. If a company fails to win a contract, an explanation is required upon request within 90 days. On probably the most visible issue, a company can apply for a license based entirely on foreign experience and credentials, and get that applications processed within a standard period of not more than 120 days, or get an explanation from the Government of Japan.

The portions of these projects which are commissioned by private and third-sector funded entities are covered by K-3 procedures. (Third sector projects are public works which are capitalized with a combination of public and private funds.) Projects in this category include Technoport Osaka, Rokko Island, and the Tokyo Teleport, as well as the International Conference Center of the Yokohama Minato Mirai 21 development. The CEOs heading the private/mixed-funded entities commissioning these projects will issue a public statement pledging to follow specific non-discriminatory procurement practices, including the use of non-discriminatory specifications and the establishment of contact points to facilitate foreign participation.

Because of the high level of business interest in terminal construction and supply, we also gave special attention to the terminals to be construction by private Japanese companies at New Hiroshima Airport, New Kitakyushu Airport, and Phases II and III of Haneda Airport. The Government of Japan quote will be sure unquote that non-discriminatory procedures are followed in each case.

IMPLEMENTATION

It has been my experience that the success of any agreement with Japan is ultimatedly determined by the investment which the U.S. side--including the affected American industries--is prepared to make in implementation.

We are now in the first stages of implementation of this agreement. As could be expected, the Government of Japan is meeting its obligations. The Japanese have announced all bid and registration dates so far. They have provided a list of contact points. They have held explanation meetings as scheduled. And they have provided master plans, registration forms and other information to us and to our firms.

The Ministry of Construction has published in English a guide to obtaining construction licenses.

The first meeting of the our Monitoring Committee--chaired by our Commercial Minister in Tokyo and including the Japanese Ministry of Foreign Affairs, the Ministry of Construction, and the Ministry of Transportation--was held on September 6 in Tokyo.

The Japanese government reported that they have established five internal committees--including one in the Ministry of Construction on the applicability of foreign construction materials and one in the Ministry of Transport for liaison and coordination with overseas firms--to oversee compliance with the agreement. We are learning more about how these committees will function--and how our Foreign Commercial Service and even U.S. industry can play a role. The point has been made that improving transparency will be an on going effort which goes beyond setting up contact points and providing master plans.

We have requested that the Monitoring Committee meet again in early December, and that some provision be made for participation by U.S. industry at that time.

Besides keeping a close watch on implementation, Commerce is working to help our industry take advantage of these new measures.

On April 6, a week after the end of negotiations, Secretary Verity and other Commerce officials outlined the agreement for 50 senior construction industry and association executives. Since that time, we have quickly notified U.S. firms, trade associations, and industry news media of specific contract opportunities. We have provided them with copies of construction license applications, registration forms, master plans, and contact points. Our Foreign Commercial Service officers are in daily contact with officials of the Construction and Transportation Ministries to find out in more detail about registration, licensing, and procurement procedures, to discuss specific projects, and to help U.S. engineering/construction firms operating in Japan.

We believe that this full court press was helpful in removing difficulty one of our licensees had when they first applied, and we view this as an excellent example of how we will continue to run interference as needed.

We have also offered to consider sharing with the engineering/construction industry the costs of establishing an industry representational office in Japan under the Trade Adjustment Assistance program. This office concept has been used to advantage by our electronics and auto parts industries and we believe it could be helpful in this instance in offsetting marketing expenses such as obtaining and translating registration forms and bid documents, and act as a clearinghouse for information on the designated projects, as well as the overall construction market in Japan.

Our companies have also responded.

Three U.S. companies have obtained construction licenses from the Tokyo Metropolitan Government: 1) the Bechtel Group (license for civil engineering, 9/25/87), 2) Fluor Daniel Japan (license for architectural work, 8/15/88), and 3) Schal Associates (license for architectural work, 9/14/88). Another U.S. firm, PAE International, already had a license when talks on construction services began.

Three other companies have submitted application for licenses: 1) Parsons Constructors Inc. (submitted applications for both civil engineering and architectural work on 9/16/88), 2) Tishman Construction Japan (submitted application for both civil engineering and architecture on 9/14/88), and 3) Turner Construction (submitted application for architecture on 9/19/88). In addition, we understand that two companies have plans to apply for licenses.

56 U.S. companies registered during the second round of registration for the Kansai airport, up from 40 in the first round. 26 U.S. companies participated in the explanation meeting held for the Haneda Airport Expansion this past July.

What do we have to show for all this activity?

U.S. companies have won an estimated $16 million in business from the Kansai Airport Authority. This includes over $10 million for construction equipment, $1.3 million for consulting services, and close to $1.2 million in telecommunications equipment.

Five American companies (one alone and four in joint venture with Japanese partners) are on the list of 15 designated bidders for the design stage of the Kansai terminal. An announcement is expected in December.

Otis elevator has been awarded a $20 million contract for people movers at Narita airport.

Nine joint ventures have been formed between American and Japanese construction companies. Although these are not joint ventures in our use of the term, they are tie-ups for the pursuit of specific business opportunities.

In the short term, we will be paying particularly close attention to the following deadlines:

-On Kansai--Applications are due October 22 for ground facilities design. Designated bidders will be announced in mid-November, with final proposals due 40 days later.

-On Haneda airport--The Japan Airport Terminal Corporation, the commissioning entity for the Haneda Airport Expansion, will accept registration forms from October 3 through October 14.

-On MM21--The registration process has been foreshortened, but the commissioning entity is holding individual appointments with foreign companies. Our Foreign Commercial Service officers in Tokyo report that there are a lot of American companies interested in the project, which includes the international convention center and land consolidation.

For the longer term, however, I would urge the committee to consider three points to put this accounting into proper perspective:

-first, we are attempting to take a measurement a scant four months after signature of an agreement designed to change forty years of behavior. We cannot sucumb to excessive expectations.

-second, the object of the agreement goes well beyond the fourteen covered projects. These are viewed as a starting point, to acquire the necessary experience to be able to work in the public sector--but mainly the Japanese private sector. We have already seen some activity in this area. President Kobayshi of Shuwa Corporation has invited American companies to bid on a 13-building development covering over 2 million square feet in Tokyo, and to assist in obtaining necessary licenses.

-finally, the scope goes even beyond Japan. The tie ups, in areas which are clearly the Japanese export industries of the future--port redevelopment, offshore islands, intelligent buildings--are viewed by our industry as the vehicles to access Japanese financing and business ties in third countries, especially in East Asia.

Thank you for the opportunity to report the status of the agreement to you today. I will be happy to answer any questions.

AGREEMENT ON JAPANESE MAJOR PROJECTS

SUMMARY

TYPES OF COVERAGE

-K-1--Kansai Procedures
-K-2--"Special Measures" which GOJ will take for seven projects.
  -virtually same as Kansai
  -time between designation and bidding is shorter:
    -30 days for construction services (vs. 60 days)
  -no specific provision for International Chamber of Commerce arbitration procedures
  -registration with commissioning entity is virtually open-ended
-K-3--Private/third sector
  -statement by CEO's to be example: main elements of Kansai procedures
  -GOJ "expects" this example to be followed by others
  -For terminals, GOJ "will be sure" they are followed

PROJECT COVERAGE

-virtually all of the original fourteen projects are covered:
  -Kansai--Kansai procedures
  -Tokyo Bay Bridge--Kansai procedures
  -Haneda Airport--Special measures
    terminal--K3
  -Hiroshima Airport--Special measures
    terminal--K3
  -Kitakyushu Airport--reporting plus candidate for addition
    terminal--K-3
  -Chubu Airport--NOT COVERED, but GOJ will provide information upon request through the monitoring committee
  -Narita Airport--
    terminal--K-3 (oral agreement)
  -Akashi Straits--Special Measures
  -Tokyo Port--Special Measures
    Tokyo Teleport--K-3
  -Minato Mirai 21--Special Measures
    International Peace Center--K-3. Policy statement already issued.
  -Kansai Science City--Special Measures
  -Ise Bay-Special Measures
  -Osaka Technoport--K-3, if additional components added
  -Rokko Island--K-3, if additional components added

PLUS--NTT Intelligent Building ($200 million) added, under Kansai procedures

Estimated value of coverage: $16.9 billion

PRIVATE/THIRD SECTOR COMPONENTS OF PROJECTS

-Under K-3 procedures
-Terminals: Haneda II and III, Hiroshima, Kitakyushu, Narita (oral). Future terminals: covered by "subsequently developed" Minato Mirai Conference Center, Tokyo Teleport. When and additional components are added: Osaka Technoport, Rokko Islands
-Combination: GOJ "expects" example will be followed. For terminals: GOJ "will be sure" it is followed.

LOCAL GOVERNMENT COMPONENTS

-Covered in Ambassador Matsunaga's letter: "GOJ believes international competition should be facilitated in major projects procurement by all entities, public and private."
-subject to monitoring

TERMINALS:

-Terminals covered under K-3: Haneda II and III, Hiroshima, Narita, New Kitakyushu.
-Terminals covered under K-1: Kansai

EXPANSION OF LIST

-GOJ "may decide" to add additional components to existing projects
-Review two years after signing to examine whether arrangements are providing sufficient access to U.S. firms
-measures may be "adjusted"
-GOJ expects we will explain this means expansion of list

LICENSES

-Prior experience in Japan not needed
-Standard processing time for Ministry of Construction licenses: 3-4 months
-for prefectural licenses: 1-2 months
-after 90 days, Ministry of Construction will provide status report on either type, on request

MONITORING SYSTEM

-Min Foreign Affairs, Construction, Transport to meet with U.S. Embassy Tokyo, at request of either side
-Covers all projects, including private sector, third sector, local government components, where "relevant to U.S. interests"
-meetings at higher level
-reports on status of future projects
-"review" session in two years: "to examine whether arrangements have provided access to U.S. firms. Measures may be adjusted.

AGREEMENT

-exchange of letters between Sec. Verity, Amb. Matsunaga
-regarding Kansai: "arrangements are accepted by two governments"
-overall: GOJ will implement measures in mutually beneficial manner.

DOCUMENTS:

-Cover letter
  -GOJ policy of non-discrimination
  -GOJ will take positive steps to promote entry of foreign firms
  -Licensing
  -Two governments confirm KIA arrangements are acceptable
  -GOJ will take "special measures"
  -Listing does not prejudice foreign access to other projects
  -GOJ also believes private/third sector should not discriminate (K-3)
  -Monitoring Committee for all matter relevant to U.S. interests; includes higher level meeting
  -GOJ may add additional components
  -GOJ will report on future projects and undecided components
  -Review after two years: measures may be adjusted
  -Confirm arrangements are acceptable: will be implemented by GOJ

-Appendix I--List of projects subject to Kansai procedures:
  -Kansai Airport
  -Tokyo Bay Bridge
  -NTT Intelligent Building

-Appendix II-Special measures

-Appendix III--List of Projects subject to Special Measures
  -Haneda Airport Expansion--Phase III
  -New Hiroshima Airport
  -Tokyo Port Redevelopment--Metropolitan Expressway
  -Akashi Straits Bridge
  -Ise Bay Highway
  -Minato Mirai 21--Major Hall for International Conference Center, land consolidation, port construction
  -Kansai Science City--Land consolidation, second Keihan Expressway, Center for Graduate Studies in Advanced Science and Technology

-Appendix IV--K-3
  -GOJ policy statement: GOJ "expects" other private/third sector participants in government projects to follow example.
  -major points from Kansai model
  -For terminals, GOJ will be sure it is followed.
  -Private sector example attached

-Appendix V--List of projects covered by K-3
  -Haneda Airport Terminal (Phase II)
  -Haneda Airport Terminal (Phase III)
  -New Hiroshima Airport
  -Kitakyushu Airport Terminal
  -Narita Terminal (oral)
  -Minato Mirai International Conference Center
  -Osaka Technoport--if and when additional components added
  -Rokko Island--if and when additional components added

JAPANESE PROJECTS COVERED BY THE AGREEMENT

| | PROJECT | TIME PERIOD | TOTAL VALUE (Excludes land cost) | ESTIMATED U.S. COMMERCIAL OPPORTUNITY |
|---|---|---|---|---|
| 1. | Kansai International Airport | 1987 - 1993 | Y 300 billion | Y 300 billion |
| 2. | Tokyo Bay Bridge | 1987 - 1995 | Y 750 billion | Y 750 billion |
| 3. | Haneda Airport<br>Phase II<br>Phase III | <br>1987 - 1992<br>1990 - 1995 | Overall value unknown<br>Terminal Y 120 billion<br>Phase III Y 110 billion | Y 230 billion |
| 4. | Hiroshima Airport | 1980 - 1993 | Overall value unknown | Y 44.5 billion |
| 5. | Kitakyushu Airport | Will be started in 10 years | | 0 |
| 6. | Chubu Airport | Not yet approved | | 0 |
| 7. | Narita Airport Expansion | 1986 - 1990 | Y 600 billion | ? |
| 8. | Akashi Straits Bridge | 1986 - 1998 | Y 383 billion | Y 325 billion |
| 9. | Tokyo Port Redevelopment | From 1984 | Y 3.4 trillion<br>(Teleport Y 1.9 tril.) | Y 66 billion |
| 10. | Minato Mirai 21 (Yokohama) | 1988 - 1993 | Y 230.8 billion | Y 58.9 billion |
| 11. | Kansai Science and Cultural Center | 1988 - 1993 | Y 713 billion | Y 270 billion |
| 12. | Ise Bay Bridge | 1987 - 1996 | Y 88 billion | Y 88 billion |
| 13. | Osaka Technoport | Completed by 1989 | | 0 |
| 14. | Rokko Island | Completed by 1990 | | 0 |
| 15. | NTT Intelligent Building | | Y 26 billion | Y 26 billion |
| | | | Total available = | Y 2198.4 billion |
| | | | = | $ 16.9 billion |

FACT SHEET
AGREEMENT ON JAPANESE MAJOR PROJECTS

- The agreement is in the form of an exchange of letters between Japanese Ambassador Matsunaga and Secretary of Commerce Verity. There are five letters being signed:

  1) a letter from Ambassador Matsunaga to Secretary Verity which spells out the specific points of agreement;

  2) a letter of acknowledgement from the Secretary making it clear that we expect the Government of Japan to implement these measures quickly and in a positive manner;

  3) a letter from the Ambassador specifying procedures for Haneda Airport radar procurement;

  4) a letter from the Secretary clarifying the status of branches and subsidiaries of foreign firms in the implementation of these measures; and

  5) a letter from Ambassador Matsunaga regarding the Brooks-Murkowski amendment to the Continuing Resolution.

- The main points of the agreement are contained in the letter from the Ambassador to the Secretary as follows:

  - Prior experience in Japan is not required when foreign firms apply for construction licenses. Standard processing times of 60 and 90 days are established for central government and prefectural licenses respectively. An applicant will receive an explanation of the status of the application after 90 days, upon request.

  - The Kansai International Airport, Tokyo Bay Bridge, and the newly-offered NTT Headquarters Building will be covered by measures agreed to by both governments last fall for U.S. access to the Kansai International Airport project. (These Kansai measures are also referred to as K-1 procedures.)

  - Special measures (K-2 procedures) will apply to certain major projects to give foreign firms experience in the Japanese construction market. The projects covered by these special measures are GOJ-commissioned portions of the Haneda Airport Expansion, the New Hiroshima Airport, Tokyo Port Redevelopment, Ise Bay Highway, Akashi Straits Bridge, Yokohama Minato Mirai 21 Project, and the Kansai Cultural and Science City.

- Registration procedures for public works will not limit participation or present a barrier to foreign companies.

- The Government of Japan expects that private and third sector (mixed government/private) organizations will follow non-discriminatory procurement policies on their portions of major works projects. The Japanese Government statement spells out specific practices--including the use of non-discriminatory specifications and the establishment of contact points to facilitate foreign participation--which it expects to be used by the third sector entities. (These are referred to as K-3 procedures.)

- The implementation of all measures covered by the agreement will be monitored by the Ministry of Foreign Affairs, the Ministry of Transport, the Ministry of Construction and the U.S. Embassy in Japan. Through the monitoring mechanism, the Japanese Government will provide additional information on, or may add additional components to the listed projects.

- A Government-to-Government review will be held after two years to decide if changes are needed to these measures, including the possibility of adding additional projects to the list.

o K-2 procedures are virtually the same as Kansai (K-1) procedures, except for the following:

  - the time between designation (i.e., being recognized as a qualified supplier) and bidding for construction services is shorter, 40 days (vs. 60 days under K-1 procedures);

  - there is no specific provision for International Chamber of Commerce arbitration procedures.

o K-3 procedures are in the form of a statement made by a private entity's CEO pledging to follow non-discriminatory procurement procedures. The Japanese Government "expects" similar policies to be followed on all third sector components of the listed projects, and "will be sure" they are followed for airport terminals at Haneda, Hiroshima, Narita, and Kitakyushu.

o Commercial opportunities covered by the three types of procedures are estimated at $16.9 billion over the next 10-12 years.

**POWER OF JAPAN'S TRADE LOBBIES RAISES EYEBROWS IN WASHINGTON LOBBYIST'S FRIENDSHIP WITH WHITE HOUSE CHIEF OF STAFF QUESTIONED**

DATE: FRIDAY March 4, 1988
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SOURCE: By KEITH M.*ROCKWELL*
& The Journal of Commerce Inc.
DATELINE: WASHINGTON
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POWER OF*JAPAN S*TRADE*LOBBIES RAISES*EYEBROWS*IN WASHINGTON
LOBBYIST S FRIENDSHIP WITH WHITE HOUSE CHIEF OF STAFF QUESTIONED

The influence of lobbyists for*Japan*on U.S.*trade*policy is of increasing concern to senior administration, industry and congressional officials.

At a time when the United States is running a $60 billion*trade*deficit with*Japan,*these officials say representatives of*Japan*have succeeded in postponing retaliation against the Japanese for restricting U.S. access to *Japan's*construction markets and in affecting some key personnel moves within the Commerce Department.

Such lobbying within the administration and on Capitol Hill is nothing

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new. However, recent events involving selecting the new undersecretary of Commerce for international*trade*and delays by interagency economic groups in weighing economic sanctions against the Japanese have raised questions in Washington about the extent of*Japan's*lobbying clout in the White House.

Some officials even suggest that the Japanese may have influenced the White House chief of staff, Howard Baker. An aide to Mr. Baker denied any knowledge of such influence on Mr. Baker.

The Cabinet-level interagency Economic Policy Council is due to consider the construction issue and possible retaliation next week. There is great fear that any decision will again be put off.

I'm very disturbed . . . these guys are skating on thin ice, said one senior administration official.

Two Republican senators, Strom Thurmond of South Carolina and Frank Murkowski of Alaska, have also notified the White House of their concern.

At the center of these questions is Global USA Inc., a Washington lobbying firm that represents the*Japan*Federation of Construction Contractors Inc., *Japan's*construction industry association.

Global has been working to sidetrack administration efforts to retaliate against*Japan*for its unwillingness to open its construction market to foreign companies.

Commerce Role Involved

The Commerce Department has the lead administration role in efforts to

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open the $8 billion Kansai Airport and other public works projects to U.S. companies.

Until his resignation last week, Bruce Smart, Commerce undersecretary for international*trade,*headed the negotiating team on the issue. His deputy, J. Michael Farren, has been doing much of the actual negotiating and, in fact, met with Japanese officials for much of this week.

Mr. Farren is known as a bulldog at the negotiating table, and no one disputes that the Japanese don't like him.

According to administration and congressional officials, Commerce Secretary C. William Verity submitted Mr. Farren's name to the White House as acting undersecretary. Those officials say White House personnel rejected Mr. Farren's name.

The officials maintain that Global used its influence within the White

house to block consideration of Mr. Farren. It seems all but certain now that W. Allen Moore, former minority staff director for the Senate Commerce Committee, will be named undersecretary for#trade.#

Thurmond Objects in Letter

In a letter to Howard Baker, the White House chief of staff, dated Feb. 20, Sen. Thurmond expressed outrage at the Japanese attempts to derail the Farren nomination.

Frankly I find this reported attempt on the part of the Japanese to influence the nominating process to be outrageous, he wrote. Sen Thurmond said

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continued Japanese attempts to keep U.S. companies out should not be tolerated, and neither should an attempt to prevent the nomination of an individual who has worked to open closed markets . . .

Speculation now is that Mr. Farren will leave the Commerce Department. His departure, along with the Smart resignation, would leave Commerce without a top official with experience in negotiating construction with#Japan.#

(If Mr. Farren leaves) this effectively means that the Commerce Department is out of (Japanese public works) negotiations for the rest of this administration, a senior administration official said.

Global's Link to Baker

White House and Global officials deny that the company has any real sway within the administration. But sources say the connections between Global and the White House go to high levels in the White House.

William H. Morris Jr., president of Global and a former assistant secretary for export promotion at Commerce, is a long-time friend of White House Chief of Staff Howard Baker.

But the connection doesn't stop there. William Timmons, who heads the consulting and lobbying firm Timmons & Co., is a former board member at Global. Justice Department documents show no record that Timmons represents any foreign clients. Mr. Timmons no longer has an official connection to Global, sources say.

Mr. Timmons does have a close contact at the White House, however. Kenneth

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M. Duberstein, deputy White House chief of staff, was a partner at Timmons and Co. before he moved to the White House staff in 1987 with Mr. Baker.

Mr. Baker, Mr. Morris and Mr. Timmons are all from Tennessee and have known each other for years through political connections in their home state.

Calls to Mr. Duberstein and Mr. Timmons were not returned. Mr. Baker is with President Reagan at the NATO meeting in Brussels and could not be reached for comment.

Morris Admits Friendship

Mr. Morris acknowledges his friendship with Mr. Baker but denied using that friendship in any way to steer U.S.#trade#policy.

I have never discussed a client activity with Howard Baker. It's a long-time close friendship and I wouldn't travel on that friendship, Mr. Morris said.

As for any role he might have played in getting Mr. Farren's name removed from consideration for undersecretary, Mr. Morris said:

I like Mike . . . we don't get involved in that kind of thing because we have to work with whoever gets that job.

White House officials similarly reject any connection. Asked specifically if Mr. Morris or Global hold any sway at the White House, an aide to Mr. Baker said not to my knowledge . . . The highest level of attention is being given to getting things settled down over at Commerce.

Bentsen Defends Baker

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Senate Finance Committee Chairman Lloyd Bentsen, D-Texas, conceded the #trade#issue is a magnet for foreign lobbyists, but he firmly rejected the notion that Mr. Baker would compromise U.S. policy.

I've known Howard Baker for a long time. I worked with him in the Senate for many, many years and I absolutely don't believe any of that, said Sen. Bentsen.

There's no question that foreign influence is pervasive in Washington when

secret of their attempts to hire U.S. reporters and get them to do public relations work for them. But if you're talking about Howard Baker, I just don't believe it, Sen. Rentsen said.

But Sen. Murkowski said strong lobby pressure in the White House was a fact of life in the United States.

I'm realistic enough to realize there are strong lobbyists with relatively high access to the administration. That's the way the system works. But if

those individuals are important enough to substantially influence people beyond the responsibility of the appropriate cabinet officer, then we have some serious problems, said Sen. Frank Murkowski, R-Ala.

Sen. Murkowski has been the member of Congress most active in seeking sanctions against*Japan*for its construction restrictions. As part of the continuing resolution legislation signed into law in December, he and Rep. Jack Brooks, D-Texas, cosponsored an amendment that prohibits Japanese



participation in public works projects for one year, unless*Japan*opens its market.

*Japan*Gets What It Wants

An official from a U.S. company with a strong interest in bidding for Kansai projects said regardless of who was responsible for removal of Mr. Farren's name for the undersecretary post, the Japanese have exactly what they want.

There is nobody on the face of the earth that knows more about Kansai than Mike. If he goes, we can kiss the rest of this year goodbye (as far as opening the Japanese market), the official said.

Some Commerce Department officials point out, however, that there are other considerations that worked against Mr. Farren. One factor is his age, 35; another, perhaps more compelling, reason is Mr. Farren's allegedly abrasive personality.

Mike is an aggressive guy. He made friends and made enemies . . . He's done some mean things to people along the way. This is Washington, what goes around comes around, said one Commerce official who admits he is no fan of Mr. Farren's.

But nobody questions that Mr. Farren, who refused to be interviewed for this article, is considered a brilliant negotiator. With only 10 months remaining in the Reagan administration, and with Congress poised to enact a tough*trade*bill, there are many officials who wonder why the administration



would bring in a relatively inexperienced man like W. Allen Moore, the choice for the position.

If (Mr. Farren) is knocked out of the box, it means the Japanese are able to choose one of our negotiators and that is a damn scandal, said one congressional aide.

Sanctions Still Undecided

What further worries some administration, congressional and industry officials is that the Global-White House connection may have led to delays of any recommendation for retaliation against*Japan*by the interagency, cabinet-level Economic Policy Council.

The*Trade*Policy Review Group, the subcabinet committee of assistant secretaries and other deputies that reports to the policy council, voted unanimously last week to recommend sanctions against*Japan.*

That was the third time the review group has voted for sanctions, but the council has yet to consider the measure. Previously, the council rejected taking up the review group's recommendation because it came before Prime Minister Noboru Takeshita's January visit to Washington.

The council was originally due to vote this week on whether to advise the president on retaliation. But sources say Mr. Baker asked the council to postpone any vote until next week, when he returns from Brussels.

Congressional and industry sources have been saying for months that the Global connection is at least partly responsible for a lack of any policy



council action. Global's Mr. Morris says, I wish we had that kind of power.

But a senior administration official maintains that this time there is no reason why consideration of retaliation should be delayed.

If it were to happen this time, in my view, it would be a scandal, he said. If (Global) has any friends in this town, they should be telling them to back off.

Sen. Murkowski shared that concern.

If (the Japanese) weren't reasonably responsive to our concerns this week and then we took no action . . . I would certainly expect a responsible explanation, said the senator.

KEYWORDS: US#JAPAN# #TRADE# POLICY POLITICS

CAPTION: BAKER: The White House chief of staff is a long-time friend of William
H. Morris Jr., president of Global USA Inc., a Washington lobbying firm that represents the#Japan#Federation of Construction Contractors Inc.

END OF DOCUMENT.

FOLLOW UP ON DAS SMITH TESTIMONY CABLE--MEMORANDUM P.1

*Embassy of the United States of America*

F A C S I M I L E

November 4, 1988

To: Ms. Marie Kissel, Office of Japan (202-377-0469)
From: Alan Turley m.e. for A. Turley
Foreign Commercial Service (03-589-4235)
CC: John Peters, FCS Osaka

Subject: Follow up on DAS Smith Testimony cable

Number of Pages including this cover sheet: Two

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1. KIAC does not publish the names of firms that respond to initial invitations to bid or compete. For instance, in the airport terminal design competition, KIAC only released the number of applicants and did not specify company names. However, KIAC does allow firms that have responded to the initial bid to inspect at KIAC offices the list of bidders.

KIAC does release a "short list" of the names of firms that have been designated to bid. For example, KIAC specified the names of designated firms for the yet to be decided airport terminal design competition.

After a bid has been awarded, KIAC only makes public the name of the winning firm/s, and other related information. The following are results of bids where U.S. firms have been involved:

a. Bid result for mini-computer to monitor KIA meteorological and oceanic phenomena:

Name of contractor: Nihon Unisys Ltd.
Date of contract: August 29, 1988
Amount: Yen 59,400,000 (US$ 475,200)

List of bidders: Nihon Unisys Ltd.
Oki Electric Industry Co., Ltd.
Hitachi Ltd
NEC Corporation/Sumitomo Corp
Mitsubishi Electric Corp.
Matsushita Electric Industrial Co., Ltd.
Yokogawa/Hewlett Packard, Ltd.
Sharp Corporation
Fujitsu Ltd.
Nihon Digital Equipment Corp.
Toshiba Corporation
IBM Japan, Ltd.

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b. Bid result for heavy dump trucks for earth moving:

| | | |
|---|---|---|
| Ordered by: | | Land Development Bureau, Wakayama Prefecture |
| Name of contractor: | | Shin Caterpillar Mitsubishi Ltd. (SCM)<br>Komatsu Seisakusho Co., Ltd. (KMC) |
| Date of contract: | | September 30, 1988 |
| Amounts: | SCM | Yen 1,014,000,000 (US$ 8,112,000) |
| | KCM | Yen 486,000,000 (US$ 3,888,000) |
| List of bidders | | Shin Caterpillar Mitsubishi Ltd.<br>Komatsu Seisakusho Co., Ltd.<br>WABCO (USA),Agent:C. Itoh & Co., Ltd.<br>Terex (KB),Agent:Kyokuto Corp. |

(Exchange rate: Yen 125 = One dollar US)

2. Projects other than the KIAC have not yet been put to tender. Registration has closed for the Metropolitan Expressway #12, the Phase One Procurement of stage II of Haneda Airport Expansion, and Minato Mirai 21. No U.S. firms are registered for the highway project, which was put into the agreement at the suggestion of the Japanese side. Four (4) U.S. firms have joined with Japanese partners for the Haneda's procurement (which is only the first in a series of tenders) and four (4) U.S. construction firms have registered and eventually been designated as qualified contractors to bid on the Minato Mirai project (International Conference Hall/Hotel).

End
1450m 7/8

Responses of Department of State and Department of Transportation
To Questions Asked by Senator Sanford

QUESTION: United Airlines has filed a complaint against JAL with the Department of Transportation. The complaint alleges that JAL engages in anticompetitive and discriminatory practices by refusing to permit United's Apollo Services computerized reservations system [to issue JAL tickets.] This effectively precludes United from marketing its system to Japanese travel agents. What is the Administration's view of this complaint? What steps has the Administration taken to resolve this issue with the Japanese.

ANSWER: Computer reservations systems have become almost indispensable to the effective marketing of air transportation services. Under the "fair and equal opportunity" provisions of the U.S.-Japan aviation Agreement, we believe that U.S. carriers have a right to market their air transportation services as they wish. Actions or inactions by a foreign country or carrier that effectively prevent U.S. carriers from marketing their services as they wish therefore constitute a violation of the Agreement. To date, JAL has not been willing to enter into a ticketing agreement with United that would enable the Apollo system to issue tickets validated by JAL in Japan. Because travel agents in Japan are not likely to have much interest in a system incapable of issuing tickets on Japan's principal international airline, JAL's refusal diminishes the marketability of Apollo to Japanese travel agents and effectively prevents United from fully using its CRS system in Japan.

In December the Department of Transportation issued an order to show cause why it should not impose certain sanctions on JAL regarding this matter. These sanctions would prohibit the ticketing of JAL flights on U.S. CRSs. Subsequent to the issuance of the show cause order, United filed a request that the Department withdraw the order and defer any further action in this case. We understand United and JAL are engaged in continuing negotiations aimed at resolving this matter. We are closely monitoring the situation and remain ready to take whatever actions may be necessary to defend U.S. carrier rights.

QUESTION: Specifically with regard to Flying Tigers, the DOT had warned Japan prior to last week's negotiations that if the Japanese government continued to deny Flying Tigers' sixth freedom rights, the United States would impose sanctions. By all accounts the negotiations failed to resolve this issue. What steps is the Administration planning to take now? What sanctions are envisioned and in what time frame?

ANSWER: On September 8, 1988, the Department issued an order concluding that Japan had violated the bilateral agreement by imposing limits on the amount of traffic Flying Tigers could carry on its Tokyo-Anchorage flights that was destined for, or originating in, Europe. Following this order, Japan offered to approve three Tokyo-Anchorage flights per week without restrictions on the amount of traffic to/from Europe that could be carried on these flights if data would be reported to Japan on these flights after three months of operations and the U.S. would approve intermodal trucking rights for Japanese carriers on a reciprocal basis.

In December we advised the Japanese that FTL's latest proposed schedule included five weekly frequencies on the Tokyo-Anchorage route. We asked if their proposal could be modified to accommodate the new schedule. The Japanese officials said that FTL should first use the three frequencies originally requested and the two sides could discuss further frequency increases after the three frequencies were operating. We informed the Japanese that this offer was not satisfactory and that sanctions may still be imposed. We are reviewing the matter at this time. (Flying Tigers recently filed schedules proposing seven weekly Tokyo-Anchorage flights.)

QUESTION: In general, do you believe that all designated U.S. cargo carriers are entitled to beyond rights as well as fifth and sixth freedom rights under the terms of the 1952 Bilateral with its subsequent revisions?

If not, why not? If so, what steps has the Administration taken to secure these rights for U.S. carriers? What has been the Japanese response to these attempts?

Can you explain why we have allowed the Japanese to control U.S. traffic that is moving to points beyond Japan such as Hong Kong?

ANSWER: As a legal matter, the U.S. routes defined by the U.S.-Japan aviation bilateral authorize U.S. designated carriers to operate beyond Japan with traffic rights between Japan and any points served beyond Japan. Thus, the bilateral agreement confers fifth freedom rights for U.S. designated carriers, be they all-cargo carriers or combination carriers.

"Sixth freedom" traffic is traffic that an airline carries between a third country and the territory of the bilateral partner via the homeland of that airline. For example, if a U.S. carrier were to transport cargo between Japan and Spain via the United States, that would be sixth freedom carriage. Bilateral agreements typically do not confer "rights" regarding sixth freedom traffic; the right merely derives from the ability of any airline to form connections within its own territory between incoming flights from one country and outgoing flights to another.

Although the U.S.-Japan aviation bilateral does not, therefore, confer the right to carry sixth freedom traffic, the Agreement enables U.S. carriers to carry sixth freedom traffic by way of connections between U.S.-Japan flights and U.S.-third country flights.

The United States and Japan differ in their interpretation of the bilateral agreement regarding the amount of sixth freedom cargo that may be carried. Japan argues that no more than half of the cargo for any individual flight should be sixth freedom cargo. The United States takes a broader view and argues that all services operated by a carrier over a route should be considered when evaluating the proportion of sixth freedom carriage.

As stated above, the Agreement authorizes U.S. cargo carriers to operate beyond Japan with fifth freedom traffic rights. However, as a consequence of a longstanding impasse regarding the interpretation of the U.S.-Japan Agreement, as a practical matter, the United States is not now able to exploit all of the rights set out by the aviation bilateral. While this impasse has continued, the two sides have reached several interim agreements that have permitted each side to implement additional services. For example, under a 1985 interim agreement, the United States negotiated the right to introduce a "small package" service into Japan. Federal Express was later selected as the carrier to utilize this opportunity. The "small package" route, however, does not include any rights to operate beyond Japan. Thus, despite the fifth freedom rights set out by the bilateral, not all U.S. cargo carriers have been able to fully enjoy these rights due to the status of U.S.-Japan aviation relations.

The Japanese do not "control" traffic carried by U.S. carriers between the U.S. and points beyond Japan, i.e. U.S.-Hong Kong traffic. The all-cargo operations of Flying Tigers and Northwest carry such cargo via Tokyo. These carriers are also not subject to Japanese restrictions regarding the amount of local Japan-Hong Kong traffic they may carry. Restrictions in the U.S.-U.K. agreement, however, do limit the carriage of local Japan-Hong Kong traffic on all-cargo services.